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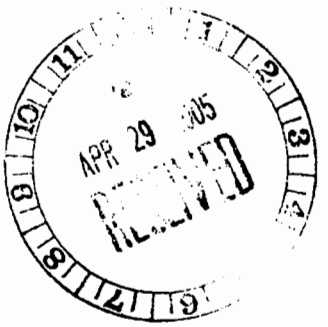
FD 28676 Sub-No.5

~~FD 28676 (Sub-No.4)~~



Appeal Arbitration Award

T.W. Black, Thomas Serge

V.

GTW-CN-Railroad

T.N. Rinaldo, Neutral

April 26 2005

Ms. Nancy Bieter . Attorney
US Transportation Board
and
Chairman , STB

Dear Nancy and Chairman :

I am requesting that the ten (10) page limit be waived in this appeal placed to the STb , due to the extreme extraordinary nature of this situation. I came as close as possible to ren written pages, but had to squeeze the last few.

This situation could not be properly addressed without the attachments accompanying the appeal . As you will find , if the record in FD 33556 , concerning labor matters are retrieved, i had appealed to the oversight committe concerning what I believd was going to happen , due to the 2001 CBA negotiated in "BAD FAITH" by both parties.

You would not believe the hurt , losses and agony that has been crested on the gTWRR and the Carmens families since I was removed from office as General Chairman . These people have no chance unless STB enforces the mandates of the STB and ICC in prior mergers (lifetime).

Thanks for your understanding.

Sincerely

Larry G. Thornton

Larry G. Thornton
3156 Nokomis Trl.
Clyde, Mi. 48049 810-984-8644

Thomas N. Rinaldo, Esq.

ATTORNEY / ARBITRATOR
LABOR & EMPLOYMENT DISPUTE RESOLUTION

November 24, 2004

Mr. Jack Gibbons
Director/Labor Relations
Canadian National
17641 South Ashland Avenue
Homewood, Il 60430-1339

Mr. T. K. Sorge
2332 N. Erie
Toledo, OH 43609-3245

Mr. T. W. Black
2055 Middleton Pike
Luckey, OH 43443

Re: New York Dock: T. W. Black, et al and CN

Gentlemen:

After reviewing the correspondence from Mr. Gibbons dated November 11, 2004, the correspondence of Mr. Black and Mr. Sorge of November 20, 2004, it is my determination:

1. The hearing shall be held at the National RR Adjustment Board offices in Chicago on Thursday March 3, 2005 at 10am. The Carrier shall make the appropriate arrangements.

2. As I understand it, the Brotherhood of Railway Carmen is not participating in these proceedings. That being the case then the Claimants have the right to select anyone to represent them in these proceedings and as I understand it they have selected Mr. Thornton who I will accept as the Claimants representative.

3. Briefs are to be exchanged with the parties and submitted to me postmarked February 1, 2005.

Very truly yours,

Thomas N. Rinaldo

P.O. Box 1334
WILLIAMSVILLE, NY
14231-1334

TEL (716) 688-1786
FAX (716) 568-0690

Thomas N. Rinaldo, Esq.

ATTORNEY / ARBITRATOR
LABOR & EMPLOYMENT DISPUTE RESOLUTION

November 3, 2004

Mr. T. K. Sorge
2332 N. Erie
Toledo, OH 43609-3245

Mr. T. W. Black
2055 Middleton Pike
Luckey, OH 43443

Re.: NY Dock

Dear Mr. Black and Mr. Sorge:

Thank you for depositing the money I requested to cover your portion of any Arbitration costs. For your information my per diem daily rate is $ 1,000.00 per day for any hearing day and $ 350.00 per hour for study and writing time. The total costs of the proceeding will be jointly shared with the carrier. Thank you.

Very truly yours,

Thomas N. Rinaldo

P.O. Box 1334
Williamsville, NY
14231-1334

Tel (716) 688-1786
Fax (716) 568-0690

Thomas N. Rinaldo, Esq.

ATTORNEY / ARBITRATOR
LABOR & EMPLOYMENT DISPUTE RESOLUTION

November 3, 2004

COPY

Mr. Jack Gibbons
Director/Labor Relations
Canadian National
17641 South Ashland Avenue
Homewood, Il 60430-1339

Re: New York Dock: T. K. Sorge, et al and CN

Dear Mr. Gibbons:

Would you kindly address the issues raised by Mr. Black and Mr. Sorge in their letter dated October 28, 2004. As I understand it the Union will not be participate in this arbitration proceeding and therefore Mr. Black and Mr. Sorge will be proceeding on their own behalf. I am ethically obligated to inform you that they have deposited with my office a sum of money to cover their portion of the hearing.

If an earlier date becomes available I will gladly reschedule said hearing. However, at the present time the date of March 3, 2005, will be a firm date. It is my practice to require pre-hearing briefs thirty days prior to the hearing.

Very truly yours,

Thomas N. Rinaldo

Mr. T. K. Sorge
2332 N. Erie
Toledo, OH 43609-3245

Mr. T. W. Black
2055 Middleton Pike
Luckey, OH 43443

P.O. Box 1334
WILLIAMSVILLE, NY
14231-1334

TEL (716) 688-1786
FAX (716) 568-0690

Thomas N. Rinaldo, Esq.

ATTORNEY / ARBITRATOR
LABOR & EMPLOYMENT DISPUTE RESOLUTION

April 14, 20054

Ms. Cathy Keane Cortez
Manager
Canadian National
17641 South Ashland Avenue
Homewood, Il 60430-1345

Mr. Larry G. Thornton
3156 Nokomis trl.
Clyde, Mi 48049

Mr. T. K. Sorge
2332 N. Erie
Toledo, OH 43609-3245

Mr. T. W. Black
2055 Middleton Pike
Luckey, OH 43443

Re: New York Dock: T. W. Black, et al and CN

Gentlemen and Ms. Cortez:

Enclosed please find a copy of my decision together with my bill for services rendered in this dispute. Please affix your signature indicating your assent to the decision or if you desire attach a dissenting opinion and see that I receive a copy for my records. I thank you for the opportunity to serve as the arbitrator in this dispute

Very truly yours,

Thomas N. Rinaldo

cc: Andrew J. Rolfes, Esq.

ATTACHMENT #8

P.O. Box 1334
WILLIAMSVILLE, NY
14231-1334

TEL (716) 688-1786
FAX (716) 568-0690

NOTICE OF APPEAL TO THE SURFACE TRANSPORTATION BOARD

April 21, 2005

Ms. C.K. Cortez
Manager Labor Relations
Canadian National Railway
17641 South Ashland Ave.
Homewood, Illinois 60430

You are now hereby put on "NOTICE" that the award in favor of the Carrier GTWRR and against claimants T.W. Black and Thomas Sorge will be appealed to the Surface Transportation Board under the proper CFR , and LMRDA 401 due to the"fact" GTWRR and the BRC **have together denied** the employees of the GTWRR , BRCA , Carmen, their mandated rights under F.D. 28676 and the ensuing **"privilege granted by the STB"** for CN to take control of the ICCRR in F.D. 33556.

You have denied protections under the 1979 Master Agreement , the 1981 Implementing agreement , the 1983 "EXTRA BOARD" agreement to these claimants and many others throughout the GTWRR, and the 1996 CBA Letter # 2 (to other Port Huron Carmen), along with the Union , BRCA-TCIU. The award , Public Law Board 6774 Award # 8 will be added for the STB scrutiny to see just how the Carrier and Union played out that claim to protect the **2001 CBA negotiated** in subliminal manner to subvert , abrogate and destroy these BRC members long standing mandated protections and utilized as past practice. If arbitrators are **"Constrained"** , Ms. Cortez , from taking away any rights , privileges and benefits, how much more should the Carrier and Union be constrained from robbing these unsuspecting members?

You will be sent a copy of the submission to the STB in the near future.

Sincerely

Larry Thornton

Larry Thornton (Employee Representative)
3156 Nokomis Trl.
Clyde , Mi. 48049

810-984-8644

ATTACHMENT #7

NEW YORK DOCK ARBITRATION PANEL

In the Matter of the Arbitration between **OPINION**

T.W. BLACK, et. al. **AND**

and **AWARD**

CANADIAN NATIONAL/GRAND TRUNK WESTERN RAILROAD (Detroit and Toledo Shoreline Subdivision)

HEARING DATE: MARCH 3, 2005

Before: **THOMAS N. RINALDO, ESQ.**
Neutral Member

LARRY G. THORNTON
Employee Representative

CATHY KEANE CORTEZ
Carrier Representative

Claimants Black and Sorge were among the seven Carrier employees who occupied the position of Carman at the Carrier's facility at Lang Yard in Toledo, Ohio when the Carrier, in an April 13, 2004, notice informed Claimants that their "position as Carman at Toledo will be ABOLISHED EFFECTIVE AT THE END OF YOUR TOUR OF DUTY ON APRIL 25, 2004." (Emphasis in original).

The record shows a series of implementing Agreements that have been negotiated by the Carrier and the Brotherhood of Railway Carmen Division of the Transportation Communications International Union ("BRC.") connected to the acquisition of the Grand Trunk Western Railroad of the Detroit, Toledo, and Ironton Railroad and the Detroit and Toledo Shoreline Railroad.

The Carrier offered Claimants, upon the abolishment of their positions, the options of exercising seniority to displace a "T Carman" at Flat Rock, Michigan; taking a separation allowance under the Washington Job Protection Agreement ("WJPA"); accepting a transfer to fill vacant Carmen positions at Flint, Michigan; or accepting a furlough at Lang Yard without protective benefits. It is most evident by viewing the exchange of correspondence between Claimants and the Carrier that the Claimants took the position, as seen in Claimant Black's letter to the Carrier's Director, Labor Relations of April 16, 2004, that the Carrier was obliged under the Implementing Agreements to create an extra board at Lang Yard and to place Claimants in seniority positions thereon. It is equally clear from this correspondence that the Carrier disagreed with the Claimants' assertion and, the Claimants, not having accepted any of the options offered by the Carrier, were "deemed" by the Carrier to be on furlough without protective benefits.

In a May 3, 2004, letter from the Claimants to the Director of Labor Relations, the Claimants stated that the letter constituted their "official notice that we are requesting 'arbitration of dispute' per Finance Docket 28250, 'New York Dock' Appendix III, No. B, C, D, E." By letter dated May 5, 2004, Claimants informed the Director of Labor Relations that they had selected one Larry Thornton "as the employee representative on the Arbitration Committee." As can be seen in a May 27, 2004, letter to Claimants by the Carrier's Director, Labor Relations, the Carrier took the position that Claimants had "not filed a proper claim under the provisions of any of the above agreements [implementing agreements] or the New York Dock Protective Conditions" and that the Claimants' attempt to designate the aforesaid Mr. Thornton as employee

representative on the Arbitration Committee was considered improper by the Carrier. As to the latter, the Carrier's Director of Labor Relations stated:

> I have been advised by officials of the union that Mr. Thornton has no authority to interpret any agreements made between the company and the organization. As such, it is my obligation to advise you that I will not be meeting with Mr. Thornton to discuss your alleged dispute or to make arrangements to allow him to represent you in arbitration.

Claimants, on June 15, 2004, transmitted a letter to the Director of Arbitration Services at the National Mediation Board, requesting that the Board "designate a neutral member to the New York Dock Arbitration Committee in order that we, affected employees, may be able to find resolution to this issue." By letter dated July 21, 2004, to Claimant Watkins, copy to the Carrier's Director of Labor Relations, the Director of Arbitration Services for the National Mediation Board stated that, "I am enclosing a panel of seven (7) neutrals."

A July 31, 2004, letter from the Claimants to the Director, Labor Relations set forth the names of the seven neutrals and requested a meeting to discuss the selection of a neutral. It is clear that a meeting was held between the Claimants (and Mr. Thornton) with the Carrier's Director of Labor Relations on August 16, 2004, at which time the undersigned neutral member of the Board was mutually selected by the Parties.

By way of further background, the record shows that, on July 23, 1979, Administrative Law Judge Beddow of the Interstate Commerce Commission imposed New York Dock Labor Protective Conditions to affected employees of the Grand Trunk Western Railroad, the Detroit, Toledo and Ironton Railroad, and the Detroit and Toledo Shoreline Railroad. The decision stated that "the ***New York Dock*** conditions will be adopted herein and modified to the extent that they

shall be deemed to be applicable to DTSL employees."

Subsequently, on September 4, 1979, the Carrier and the representatives of the various organizations, including BRC., entered into an Agreement. This Implementing Agreement, among its terms, stated it would not be effective until the Interstate Commerce Commission approved the Carrier's Control Application and when the Carrier and a labor organization representing a particular craft or class negotiated a "working agreement" for all employees on the three railroads represented by that organization.

Thereafter, in September, 1981, BRC and the Carrier negotiated an Agreement concerning all the BRC-represented employees on the combined Carrier system. The 1981 Agreement, the record shows, contained a number of separate Agreements, set forth as Agreements "B though H," which the Parties agreed would "constitute coming to agreement on a single Working Agreement which will be applicable to all Carmen employees of the G.T.W. and D.T.&I. Railroad represented by the BRC" It is noted that on September 23, 1981, the same Agreement, save for Agreement "D", was made applicable to employees of the Detroit and Toledo Shoreline Railroad.

Agreement "H" of the 1981 Agreement contains the following provisions:

> If the protected employee to be assigned pursuant to Section (b) has to change his residence, he will be given four options: (1) transfer with the work to the new seniority point, if such is the case, with moving benefits if change in residence is required and actually made; or (2) transfer to an available job in his craft for which qualified at another point with moving benefits if change is residence is required and actually made, retaining his seniority at his original point until he can hold a regular assignment there, at which time he must decide and advise the Carrier in writing at which point he desires his seniority to be maintained; or (3) elect to take separation pay computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936; or (4) take

a furloughed status with suspension of all protective benefits with rights and obligations to recall to service in his craft in accordance with existing schedule rules.

...

1. Any permanent vacancy at any point subject to and covered by G.T.W. - D.T.&I. - BRC Working Agreement un-filled through the seniority processes which would require the hiring of a new employee may be offered to those BRC furloughed protected employees at other points receiving protective compensation pursuant to the September 4, 1979 Agreement in reverse order of *seniority date as a carman (See paragraph 5); such offer will first be made to those employees who could fill the position without requiring a change of residence. Those employees rejecting the offer which will be made in reverse order of seniority will have their protective compensation payments suspended. (See Section 6(d) of New York Dock). If an employee who rejects the offer later accepts the offered position, those employees who had their payments suspended shall, if still entitled to such, have their protective compensation payments restored effective with the date an employee physically assumes the position.

2. If the procedure set forth in paragraph 1 does not result in the position being filled then the position may be offered to those BRC furloughed protected employees at other points receiving compensation pursuant to the September 4, 1979 Agreement, in reverse order of *seniority date as a carman (See paragraph 5), who would be required to change their residence.

Section V of the Agreement "H" of the 1981 Agreement reads:

1. This Agreement shall constitute the agreement referred to in Section 4(a) of Appendix III (New York Dock) that is required before changes can be made. Accordingly the provisions set forth herein shall substitute for the provisions set forth in Section 4 (a) of Article I of New York Dock which Section shall be inapplicable.

2. This Agreement is intended to clarify conditions, responsibilities and obligations of protected employees. Nothing contained in this Agreement shall be construed to eliminate or reduce any existing conditions, responsibilities or obligations pertaining to protected employees as set forth in any rule, agreement, including the September 4, 1979 Agreement or in "New York Dock Conditions", I.C.C., Finance Docket 28250.

Thereafter, BRC and Carrier negotiated another Agreement in March, 1983. Section 1 of the March 18, 1983 Agreement reads:

> 1. Section 5 and 6 of Article II of "New York Dock" protective conditions which are attached to the September 4, 1979 Agreement, are modified only to the following extent:
>
> (a)(1) The following shall be substituted in place of the monthly displacement allowance entitlement provided for in Section 5 (a) of "New York Dock" and the monthly dismissal allowance entitlement provided for in Section 6(a) of "New York Dock": All protected employees who are certified as adversely affected pursuant to Section B of Agreement "F" dated September 23, 1981 who would otherwise stand to be furloughed as a result of a reduction in force will, during their protective period be placed on an extra board for four consecutive days each calendar week, excluding rest days, and will be guaranteed a minimum of 7 hours at the straight time hourly rate of pay (including COLA) of a Carmen Welder employee for each of the four days.

As can be seen, the 1983 Agreement references Agreement "F" of the 1981 Agreement, Section B thereof. Section B of Agreement "F" of the 1981Agreement reads:

> Section 2, of the September 4, 1979 Agreement pertaining to the acquisition of the D.T.&I. Railroad by the G.T.W. shall be applicable to those Carmen Employees who has an employment relationship with G.T.W. or D.T.&I. Railroad on June 24, 1980 (date of acquisition) and have a Carman seniority date prior to June 25, 1980 and shall be applied as follows:
>
> 1. Employees with a Carman seniority date prior to June 25, 1980 who are actively employed as regular assigned Carmen on the effective date of this Agreement and employees working temporary Carmen vacancies but who have a regular assigned Carman position on the effective date of this agreement, shall be considered protected employees and certified as "adversely affected" as of the effective date of this Agreement. See paragraph 3.
>
> 2. This paragraph covers those employees not covered by paragraph 1 who do not have a regular Carman assignment on the effective

> date of this Agreement but who have a seniority date as a Carman employee prior to June 25, 1980. When such an employee after the effective date of this Agreement obtains the status of a regularly assigned Carman such employee shall be considered a protected employee and he shall be on such date be certified as "adversely affected." See Paragraph 3.

3. Section 3 of the September 4, 1979 Agreement reads as follows:

> Section 3. The protective period for a "protected employee" shall be from the date he is certified as adversely affected until he qualifies for early retiree major medical benefits provided under Group Policy GA-46000, except as otherwise provided in Article I, Section 5 (c) and 6 (d) of New York Dock.

The Claimants state that the crucial issue before the Board is whether the Carrier's decision to abolish the Carmen position at Lang Yard in Toledo, Ohio amounted to a "transaction" within the meaning of the New York Dock Labor Protective Conditions. In setting forth their position, the Claimants maintain that the Carrier did not transfer Carmen work out of Lang Yard and that no reduced work force needs can be found at the Yard. Instead, the Claimants argue, the work of Carmen at the Yard "is presently being done by the Trainmen and Conductors at Lang Yard who initially went through a four (4) hour training class to do Carmen Work, ... a scab car repair facility located at Lang Yard ... and on occasion Carrier will transport Carmen down to Lang Yard from Flat Rock Yard, approximately thirty-five (35) miles north of Lang Yard to perform carmen work."

The Claimants maintain that the Carrier's decision to abolish the Carmen positions amounted to a New York Dock "transaction." According to Claimants, the Carrier's reliance on Agreement "H" of the 1981 Agreement is misplaced. The only part of Agreement "H" that the

Claimants find relevant is paragraph 2 of Section V. Claimants maintain that the 1981 Agreement served as "the trigger for the provisions of Section 11 [of the 1979 Agreement]." Claimants then urge that the 1983 Agreement saw "more changes ... made to the provisions of the September 4, 1979 Attrition Protection Agreement." These changes, Claimants assert, "modified Section 5 (Displacement Allowances) and Section 6 (Dismissal Allowances)" of the New York Dock Protective Conditions. It is this language that the Claimants maintain calls for the creation of an extra board.

Continuing with their argument, the Claimants state that the provisions of the 1979 Agreement applicable to the instant dispute can be found in Sections 6 and 7 thereof. Section 6, the Claimants observe, defines a "change of residence" as "a transfer of an employee's work location to a point located either (a) outside a radius of 30 miles of the employee's former work location and farther from his residence than was his former work location or (b) is located more than 30 normal highway route miles from his residence and also farther from his residence than was his former work location." Section 7, the Claimants observe, states that "DTSL employees who are receiving dismissal allowances shall be obligated to accept a reasonably comparable position with the G.T.W. or the D.T.&I. which does not require a change in residence in order to maintain their protection hereunder."

The Claimant then go on to state that the language, in their estimation, means that former DTSL employees do not have to transfer to a point beyond 30 miles, via Section 6, but must exercise their obligation to "accept a reasonably comparable position with the G.T.W. or the D.T.&I." provided it is within 30 miles. The Claimants also reference various parts of the New

York Dock Protective Conditions in support of their claims that, "if the alleged transaction proposed by the carrier in the case at bar is not a legitimate transaction, it follows that the carrier does not have the right to 'require' a 'change in residence'."

According to Claimants, after the acquisition date of June 24, 1980, the terms and conditions of the New York Dock Protective Conditions applied to Claimants until a single Working Agreement was arrived at in September, 1981. Section 2 of the 1979 Agreement and Agreement "F" of the 1981 Agreement, according to the Claimants, as applied to them, certifies them as "adversely affected." Claimants maintain that the Carrier and BRC "wrote out" Section 4 (a) of the New York Dock Protective Conditions and in its place substituted Agreement "H" of the 1981 Agreement. Claimant then state they "have only point seniority on the former DTSL Railroad at Lang Yard." Thus, Claimants posit that, "when all positions at Lang Yard are abolished as was done in the case at bar, no work from Lang Yard was transferred in accordance with the provisions of Agreement "H" claimants have nowhere to go at the point where their jobs were abolished, except to the Extra Board ... in accordance with the provisions of the March 18, 1983 Agreement."

The 1981 Agreement "H", the Claimants state, has three "applicable provisions," identified by "position and work being transferred"; "work transferred but no positions: position abolished"; and "portion of work to be transferred but not position: position to remain at same point." None of these three provisions apply in the instant case, the Claimants' argue, since "all jobs were abolished and none of the work was transferred." Indeed, Claimants argue, the Carrier's conduct in abolishing the Carmen positions at Lang Yard was a ploy to inappropriately

transfer wealth from the employees to their employer.

The Claimants also argue that the bulletin to Carmen at the Lang Yard concerning the abolishment of the Carmen position was not a proper notice of a "transaction" in accordance with both the New York Dock Protective Conditions and Agreement "H" of the 1981 Agreement.

The Claimants thus state that, despite the fact that Carmen positions at Lang Yard were abolished, the work of Carmen continues to be performed. Further, Claimants maintain that the 1979 Attrition Protection Agreement gave "lifetime protection" to the Claimants in the form of "providing a dismissal allowance." The 1981 Implementing Agreement, which the Claimants state "triggered" the 1979 Agreement, certified Claimants as "adversely affected 'protected employees'." The 1983 Agreement modified the 1979 Agreement's dismissal allowance provisions, the Claimants argue, in that an extra board was created in place of the dismissal allowance.

The Carrier maintains, in the first instance, that the matter is not properly before the Board. According to the Carrier, the Arbitration Panel herein is not properly constituted and is without authority to interpret the Implementing Agreements made by BRC as the exclusive representative of employees in the Carmen craft. Thus, the Carrier observes that the Implementing Agreements were Agreements between the Carrier and BRC, and that both the Carrier and BRC are in agreement that the Claimants' claim is not supported by the Implementing Agreements. In bringing the instant matter to arbitration, the Claimants, the Carrier observes, have designated Mr. Thornton to serve as their "representative" on the Panel. The Carrier notes, however, that Mr Thornton is not an officer or agent of BRC, has no authority

to interpret the Implementing Agreements entered into by BRC with the Carrier, and that the Carrier has appropriately lodged objection to his designation.

In setting forth its position on the above point, the Carrier references its duty under the Railway Labor Act to negotiate agreements only with the duly authorized and exclusive representatives of employees in a particular craft or class. There is judicial authority, the Carrier contends, to support its position that the arbitration procedures negotiated between the Parties are the exclusive means by which a claim for protective benefits can be resolved. The Carrier emphasizes its contention that the ability of the Claimants to designate Mr. Thornton as their "representative" has the effect of undermining the Carrier's collective bargaining relationship with BRC.

Additionally, the Carrier asserts that the merits of the claim cannot be reached because the Claimants have never filed any proper claim for protective benefits. While the Carrier observes that the Claimants stated they were invoking the arbitration procedures under Article I, Section 11 of ***New York Dock***, the Carrier observes that the Claimants did not submit any type of formal claim that identified the "transaction" that supported the claim for benefits. The Carrier maintains that Claimants, in essence, have sought a mandatory injunction that would require the Carrier to establish an extra board. It is the Carrier's position that no authority exists to permit the Panel to grant such relief.

On the merits, the Carrier asserts that the claim should be rejected because the plain language of the Implementing Agreements requires Claimants to accept a transfer to fill vacant Carmen positions or forfeit their rights to protective benefits. Specifically, the Carrier focuses

on the language contained in Agreement "H" of the 1981 Agreement, and asserts that said language expressly required Claimants to accept a transfer to fill an available vacancy or have their protective benefits suspended. The Carrier's reference to Agreement "H" focuses on Section II, paragraph 2 thereof, which the Carrier maintains sets forth a procedure that applies to a transfer of employees to fill vacancies that would necessitate a change of residence. This procedure, the Carrier maintains, grants employees four options: the ability to transfer to a new seniority point with moving benefits if the employee changes residence; the ability to transfer to another position at another point while retaining seniority at a original location; the ability to take a separation allowance; or the option of taking furloughed status at the original location with a suspension of all protective benefits. The Carrier notes that these four options were the options that were offered to the Claimants.

Additionally, the Carrier asserts that the record evidence reflects that the Carrier's offer of the four options to Claimants was entirely in keeping with a past practice that existed between the Carrier and the BRC concerning the application of Agreement "H". The Carrier argues that the record evidence also reflects that the BRC itself agrees that the Carrier has not violated any of the applicable Agreements. The Carrier focuses on a June 28, 2004, letter to the National Mediation Board from the BRC's General Chairman in which it was stated "there is no basis for a claim under the Controlling Agreement or any other Agreements." The Carrier proffers that this interpretation by BRC of the applicable Agreements must be given considerable weight by the Board to the extent that the merits might be addressed. Further, the Carrier asserts that its position that Claimants were obliged to accept other available employment opportunities is

consistent with the way in which labor protective conditions have been interpreted by both the Interstate Commerce Commission and the Surface Transportation Board.

The Carrier rejects the Claimants' argument that the March 18, 1983 Agreement, which provided for the creation of a guaranteed extra board, supports the claim. In the Carrier's estimation, the March 18, 1983 Agreement, by its express terms, sought to only modify the manner in which a displacement or dismissal allowance would be paid to employees entitled to the allowance. The Claimants the Carrier argues, can find no support in the 1983 Agreement because, according to the Carrier, no part of the 1983 Agreement changed the obligation of an employee to take advantage of available employment opportunities as a precondition to exercise the right to a displacement or dismissal allowance.

The Carrier further rejects the Claimants' argument that it failed to comply with the notice and negotiation requirements of ***New York Dock***. According to the Carrier, these requirements were not applicable to the Carrier's decision to abolish the Carmen positions at Lang Yard. Thus, the Carrier asserts that job abolishments resulting from a decline of business do not amount to a "transaction" under ***New York Dock*** or a "coordination" under WJPA.

Finally, the Carrier maintains that the Claimants' assertion that they were not required to transfer under the terms of Section 7 of the 1979 Agreement is devoid of merit. According to the Carrier, the terms of Section 7 of the 1979 Agreement have never been applicable to the Carrier's right to transfer protected employees in accord with Agreement "H" of the 1981 Agreement. In addition, the Carrier asserts that, according to the Claimants, the BRC had explicitly told them that limitations on transfers of DTSL employees drawing dismissal

allowances were applicable only to those employees receiving such an allowance at the time the Agreement became effective.

OPINION OF THE BOARD

The Board is convinced that controlling law requires the Carrier, as stated by the United States Supreme Court in ***Virginian Ry Co. v. System Fed. No. 40***, 300 US 515, 548, "to treat only with the true representative, and hence, the negative duty to treat with no other." Further, the Board has no doubt that the affirmative duty and negative duty identified by the Supreme Court extends to agreements concerning protective conditions, including those before the Board in this case. There are judicial decisions cited by the Carrier, with which the Board agrees, that, in this case, stand for the proposition that only BRC can be considered to be the "duly authorized representative" of the Claimants and that the claim herein is to be processed only under agreements negotiated by BRC. Hence, the Board agrees with the Carrier that the only proper forum in which Claimants could pursue the claim brought before this Board would be by submitting said claim to an arbitration panel that was established by the Carrier and BRC as the Claimants' "duly authorized representative." Mr. Thornton, the record shows, does not possess any connection to BRC, and it cannot be said, therefore, that the Board has been properly constituted. Accordingly, the Board finds that it is without jurisdiction to address the claim. Parenthetically, the Board observes that the fact that the National Mediation Board issued names of neutrals to the Claimants and to the Carrier cannot, on the state of the record herein, support

ATTACHMENT #7 1075

the conclusion that the National Mediation Board had arrived at a conclusion different from the conclusion reached herein.

Additionally, the Board also finds that the claim is procedurally unsound because the Claimants never filed a formal claim that identified the "transaction" that supported their claim for benefits. ***New York Dock*** arbitration awards, of which there are many, reflect the need to have a formal claim so that an orderly application of the appropriate burdens of proof can be pursued. Having failed to file a formal claim, the Claimants have not properly presented the Board with a "claim" to be assessed under the terms of ***New York Dock*** and the Parties' Implementing Agreements. Thus, the Board finds the lack of a formal claim to be a second reason why the claim asserted by the Claimants cannot be sustained.

Finally, the Board would note that, even if the merits of the Claimants' position were considered, the Board is not at all persuaded that the Claimants have set forth a meritorious claim. Paragraph 2 of Section II of Agreement "H" of the 1981 Implementing Agreement expressly addresses the filling of vacancies by protected employees who would be required to change their residence. Agreement "H" of the 1981 Agreement explicitly obligated Claimants to accept a transfer to fill an available vacancy or have their protective benefits suspended, as was done in the instant matter. The options the Carrier offered the Claimants, the Board finds, were consistent with the language of paragraph 2 of Section II of Agreement "H" of the 1981 Agreement. Having not elected the first three options, Claimants were thus properly deemed by the Carrier to be placed on furloughed status with suspension of all protective benefits. The Board also makes the finding that the manner in which Claimants were treated is entirely

consistent with the past practice on the Property that has existed between BRC, Claimants' "duly authorized representative," and the Carrier.

In finding that no violation of ***New York Dock*** or any of the Implementing Agreements occurred, the Board places great weight on the June 28, 2004 letter to the National Mediation Board by the General Chairman of BRC. This letter reads:

> This will acknowledge receipt of a copy of your letter dated June 21, 2004 addressed to Mr. Michael D. Watkins involving the above referenced matter. Attached to your letter were various pieces of correspondence, two (2) of which seem to be incomplete: there was only one page of the letter to you, dated June 14, 2004 and there was only one page of a letter to Mr. Gibbons dated April 28, 2004, that appears to be from Timothy W. Black.
>
> In your letter of June 21, 2004, you advised that you were furnishing Mr. Gibbons and the undersigned with a copy of your letter for any comments that we might care to make in regards to this matter. First, I have not filed a claim under the provisions of New York Dock on behalf of the employees referenced in your correspondence. I have advised the employees Local Chairman that under the circumstances involved in this matter that there is no basis for a claim under the current controlling Agreement, or any other Agreements. The employees did not agree with my decision and have appealed same through the proper internal channel of Our Organization. These employees have initiated this action with the Board of their own accord. The Carrier offered these employees employment at other locations, which they declined. Since the employees declined these offers of employment, there are no Agreement provisions, to now pursue a claim. Technically, these employees have never made a written request that I file a claim on their behalf.

The Carrier's challenged decision, the Board finds, is consistent with ***New York Dock*** Awards that hold that employees must accept positions that would require them to move or else be placed on furloughed status without benefits. A consideration of Claimants' arguments, in the Board's estimation, calls for no conclusion different from the findings made herein. Thus, it is evident to the Board that the March 18, 1983, Agreement, as the Carrier has argued, served

the purpose of only modifying the manner in which displacement or dismissal allowances would be paid to employees entitled to receive same. As noted, under the 1981 Agreement, Claimants were not entitled to a displacement or dismissal allowance for the simple reason that they did not take advantage of available employment opportunities. In keeping with the Board's finding that no proper formal claim has been filed herein, the Board also rejects Claimants' arguments that inadequate notice was given under ***New York Dock***. The Board further finds that Claimants have failed to present any evidence that the job abolishments were a "transaction" within the meaning of ***New York Dock***. Thus, the Carrier was under no obligation of rebuttal. Finally, the Board notes that any reliance by the Claimants on the Attrition Agreement of 1979 cannot be considered availing. There is no evidence that the Parties to the 1979 Agreement ever considered it to limit the Carrier's right to transfer protected employees in accord with the subsequent Agreement "H" of the 1981 Agreements.

AWARD

For the reasons stated, the claim is denied.

DATE: 4/15/05

THOMAS N. RINALDO, ESQ., NEUTRAL MEMBER

I dissent entirely

CATHY KEANE CORTEZ
CARRIER MEMBER

LARRY G. THORNTON
EMPLOYEE MEMBER

SENT BY FACSIMILE 4-18-2005 and hardcover 4- 21-05

April 20, 2005

Mr. Thomas N. Rinaldo, ESQ. CASE T.W. BLACK V CN (GTWRR- DTSL)

Neutral Member **(Thornton dissent's in the most stringent manner to this erroneous**

Hearing date : March 3, 2005
DISSENTING OPINION !-------- To be attached to the Award by T.N. Rinaldo

Mr. Thomas N. Rinaldo :

After receiving your determination of the "AWARD" in this case , it is very clear that "ulterior motives" inter played with your decision. By your own admission, the facts, truth and evidence nor the "MERIT"S" of the case had any "part" , place in your decision. You clearly had no "right" and certainly no authorization to decline a "claim" (NYD DISPUTE) , when in your own word's , you stated the BOARD (Thornton, Rinaldo and Andrew J. Rolfes, ESQ.) did not have **"Jurisdiction"** in the matters before the Board.

Your thorough study of Appendix III section 11 (a) (sent to you at your request by T.W. Black Claimant) , input and advice , **made sure and clear to the carrier** , that I , Larry Thornton did have a right to represent the members in that hearing . You turn around in the beginning of the "AWARD" state that Thornton had no right and therefore the board did not have "jurisdiction" in that case. Since at this "point" you had determined the "Arbitration Board" did not have "Jurisdiction" as the Carrier had suggested , that should have been the end of your service's in this matter. If you , the Carrier and employee's representative were not legally in place for this case , there should have been no Arbitration hearing at all. This should have been a union non representation case in the Courts.

This gives the appearance of "entrapment" for the members and the payment of money , $5,000.00 to initiate the process. Your letter;s bear this out . Therefore it is clear those employees should owe you not one cent . They as citizens have the right to fair and equal justice in this matter , and they were denied this . This in fact could and may amount to a fraudulent intent to acquire money under a false pretense . We feel we were "set-up!" You indeed did lead and make Black, Sorge and myself believe you had accepted Thornton as the employees representative . This was done in a manner that raises questions concerning your intents , doubts about your genuine integrity . That is surely not ethical . That is unlawful ! That was misleading . You were sent Appendix III section 11 (a) to determine that I was allowed to represent the people. And you wrote the Carrier stating I would be the employee Representative.

Your statement says there was a "series" of implementing agreements between BRCA and GTWRR. That is upfront , a **"false"** statement. There was ONE implementing agreement, 1981. You had to know that. You had M.J. Kovacs (Labor Relations GTWRR) letter in Carriers submission stating that the Carrier was **"REQUIRED" to establish an extra board**. You had D.E. Provers March 15, 1983 letter, stating that in **"LIEU" of furlough the carmen would be**

ATTACHMENT # 8

placed on an extra board. That was the question before you , with all agreements to read and decide from. You NEVER decided from the agreements ! You just reprinted the Carriers false contentions.

You, utilizing "ulterior motive" , other than utilizing the facts , truth and documentation in your possession made a ruling in this case and were not legally nor authorized to make a ruling , especially when you state the "BOARD" did not have "jurisdiction" in this matter. In Courts, a Judge knows better than to make a ruling if his Court does not have jurisdiction in a case. You are an attorney . You know better also.Your reiterating the Carrier claim that the emoployees failed to file a "proper claim was an erroneous un informed ruling also. **They filed a ["DISPUTE"] !** That dispute still stands , no redress.**Their letters to the carrier was their claim (to be placed on an extra board as past practice!**

You told me in the very first discussions I had with you. "Mr. Thornton I have never handled a New York Dock Case before. You still have not Mr. Rinaldo. The very least and most you should have done was "DISMISS) the case for lack of jurisdiction. Your decision will not stand muster in any court.You had no right to "cause" the Carrier and Union to believe they can "abrogate the employee's rights , privileges and benefits through a subliminal CBA that was NEVER approved by the STB as required in Finance Docket 33556.

You had no right to file a "flase" statement (False LT) that I, Larry Thornton met with the Carrier and the Claimants in Chicago to "[pick" a arbitrator. I was not at that meeting.! You heard and believed that from the Carrier or you made that up yourself.

I will not go anymore into detail , but you are put on notice , this will be appealed , investigated in one manner or another. To many lives are destroyed by your yielding to "some" pressure outside of Justice. Your putting so much weight into J.V. Wallers letter to the NMB is in fact "Laughable" as hilarious. You have accepted J.V. Waller CBA that the STB stated in Finance Docket 33556 would not be allowed.

Sincerely

Larry Thornton

Larry Thornton - 810-984-8644
3156 Nokomis Tr.
Clyde, Michigan, 48040

With cover letter:
CC. National Mediation Board
New York Bar Association
Illinois Attorney General
New York Attorney General
United States Attorney General

APPEAL TO THE SURFACE TRANSPORTATION BOARD (STB) OF ARBITRATION CASE AND THE ERRONEOUS AWARD IN THE T.W. BLACK V CN-GTWRR-ICRR CASE MARCH 3, 2005 , CHICAGO , ILLINOIS .

This AWARD must be VACATED by This Honorable Government Body, The Surface Transportation Board (STB) so as to restore "faith" in the decisions mandated and imposed upon the Carrier GTWRR and the Union BRC-TCIU . This STB is asked to back up it's findings and ORDERS and Stipulated CONDITIONS in Finance Docket 28676 and Finance Docket 33556 (IC-CN) merger. CN-GTW- IC have completely done away with the negotiated "labor Protections Mandated" and used as "Past Practice" since 1979 , 1981 and 1983 and my 1996 CBA.

ARBITRATOR , THOMAS N. RINALDO , ESQ.

LARRY G. THORNTON - Former General Chairman JPB # 60 BRCA-TCIU EMPLOYEE REPRESENTATIVE (New York Dock -Appendix III section 11(a) authority)

CATHY KEANE CORTEZ
CARRIER REPRESENTATIVE

Section 1109.2

1. **This appeal is of Extra ordinary circumstances** and brings to light the manner in which the Carrier GTWRR and the Organization BRCA-TCIU have put into effect , the abrogation of the claimants and other BRC Carmen's Rights, Privileges and Benefits Mandated and set as CONDITIONS in Finance Docket 28250 and FD 28676 . This incorporates the 1979 Master agreement **(Attachment # 1)** the 1981 Implementing Agreement , and the March 18, 1983 extra board agreement **(attachment # 2)** which replaced the Section 8 of the 1979 Master Agreement.

SEE ATTACHMENT C = **1995 Extra Board , Port Huron, Mi. Carshops.** This clearly shows that all employees at Port Huron were placed on an extra board. The same is required for the claimants in this case.

These were all mandated protected rights , privileges and benefits under auspicious of NYD (enhanced) by the ICC in 1979 . This labor protection was negotiated by GTWRR and RELA and was the exact "CONDITIONS" imposed by ICC so as to allow the late applicant GTWRR to acquire the DT&IRR and DTSLRR , consummation date June 25, 1980.

2. The Carrier and Union , **both are relying on their 2001 CBA (attachment # 3)** negotiated after the approval of STB FD 33556 . That CBA and the intent and factual activities since it's being signed April 9, 2001 , was to abrogate all labor protections on the GTWRR , and insert the provisions agreed to in the 2001 CBA . The Carrier in their "brief" stated that the 2001 CBA has no effect on these employees prior labor protections. That was a false representation of the facts and reality . The Carrier and UNION refused these claimants their legal prior , mandated Lifetime protection by the ICC which has been "past practice" since 1979. Not the past practice spoken of by the arbitrator in the award. The only "past practice" he could have been right about is , started with the 2001 CBA . Otherwise that was a direct falsehood .

The STB in FD 33556 gave CN the right to take over the ICRR in 1999. The BRC membership had turned down the proposed CBA since 1997 until 2001. They had been without a new CBA since my contract expired January 1997. The union put the CBA out for a "vote" in 2001. The UNION refused about 30 BRC dues paying members the right to "VOTE" on that CBA in 2001. Those BRC members had taken employment with PDS Railcar Company under the SIDE LETTER # 2 of the 1996 CBA negotiated by myself, Larry Thornton and GTWRR. I had secured representation at that facility. Side Letter # 2 provided that "IF" any portion of GTWRR was sold or "LEASED" that any TCIU (BRC-TCIU) Carmen who would be furloughed from that leased facility , would revert back to the EXTRA BOARD (Not denied any labor protections on the GTWRR). The BRC finally filed and processed a claim to get those people back on the GTWRR to the Extra Board they were on before signing for the option (d) in my CBA. The AWARD at PLB 6774 award No. 8 is attached **(attachment # 4)**

3. This Honorable Board will see where the arbitrator in that case , ruled that the Carrier and Union's CBA , signed April 9, 2001 **["SIDE LETTER" # 1]** did in effect cause the "withdrawal" of the claim for the extra board protection afforded these 30 carmen when they were "FURLOUGHED" permanently March 7, 2001. Remember, these 30 carmen were not allowed to VOTE on that CBA that indeed stripped them of their rights, privileges and benefits . This Board will see the "President" BRC letter attached to attachment 4 (2001 CBA) where that CBA was ratified by a 12 vote margin. The Carmen on the side letter # 2 of my 1996 CBA **(Attachment # 5)** and all GTWRR carmen voted ratification of the 1996 CBA That allowed the side letter #2 enforcement . BUT the UNION refused to allow those dues paying members to VOTE on their 2001 CBA because they knew the 30 on side letter # 2 would never approve that collusive CBA.

4. Necessary Format for this appeal:

(1) That a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record;

The finding of fact were in the "record" including the ICC mandated 1979 Master agreement (enhanced New York Dock) September 1981 Implementing agreement, the March 18, 1983 extra board agreement , and reference to the STB Finance Docket 33556 , (In part , **Attachment # 6)** Orders and Findings. The Carrier never supported their contention that any agreements, new or old, "ABROGATED" the 1979 mandated Conditions in F.D. 28250 and F.D. 28676. The Carrier chose to use "just" agreement "H" of the 1981 agreement (Implementing) and ignore, and abrogate the requirement to establish an extra board as called for in the 1983 agreement, which replaced Section 8 of the 1979 agreement . the 1983 agreement has been in place from 1983 until after the "negotiated" BRC-TCIU - GTWRR CBA April 9, 2001.

(2) That a necessary legal conclusion, or finding is contrary to law, Board precedent, or policy;

(1) A legal conclusion that only the Union can represent the employees by the Arbitrator after first stating in letter form to the Carrier, **(attachment # 7)** that he (arbitrator) ***will accept*** Larry Thornton , former General Chairman as the Employees representative due to the "fact" the

UNION was not going to be a part in making the claim in behalf of the employees. See **(attachment 8)** Jack Gibbons letter to arbitrator stating the Company will "ADHERE" to your acceptance of Mr. Thornton as the employee representative. SEE **(Attachment # 9)** Thornton letter to Rinaldo.

SEE Labor Management Reporting Disclosure Act (LMRDA section 401 (a) (b) and (c) . This will assist the Board in determining WHY the Union refused representation for these people in F.D. 33556 and now in complaint. Corruption , no ethical standards , "Breach of trust", extortion of members rights through subliminal language (meaning what it say's and not saying what it means in 2001 CBA), coercion **(promise's to double the signing bonus from "400.00 to $800.00 if ratified early.)** These Carmen had no one to tell them about their protective rights etc.

(2) The STB's own conclusion that an Arbitrator is "constrained" when it comes to Labor protection in CBA' s not to allow any taking away of the protected RIGHTS, Privileges and BENEFITS from the employees. See Findings and orders , STB F.D. 33556. The arbitrator in this case set the employees and I up , to believing I could represent the people according to NYD Appendix III section 11 (a). If an arbitrator is constrained, how much more should the Carrier and Union be constrained from taking away the employees , rights, privileges and benefits??

(3) It has to be construed as "illegal" to come up with a CBA after getting STB approval in F.D. 33556 (CN-IC) Merger , that destroyed the inplace mandated labor protections since 1979 by the Same Railroad company who had pleaded with the ICC to reopen the N&W - B&O petition to take over the DT&I and DTSL. This was GTWRR-CN (Parent) , the same CN-GTW-IC , that is denying the membership (Carmen -BRCA-TCIU) their legal mandated rights , privileges and benefits.

(4) That an important question of law, policy, or discretion is involved which is without governing precedent;

(1) The question of LAW and "policy" is ; that never before in memory has a union and Carrier utilized a CBA under the RLA to steal the employees rights, privileges and benefits utilizing high ethical standards, no corruption , denying individual employee right etc. Not while ICC was in place . **(Except N&W v Nimitz)**Not while STB has been in place. The STB would have to have approved that 2001 CBA before it could have been utilized and the STB I do not believe had the authority to abrogate prior labor protections. The Carrier and Union were required to bring that back to STB for their review to see that the employees were treated fairly. See 33556. There was no governing precedent allowing such a sham CBA .

THE REASONS FOR CONGRESS DECLARATION OF LMRDA AS THE LAW GOVERNING RAIL UNIONS AND CARRIERS OF THIS NATION.

Declaration of Findings, Purposes, and Policy
(29 U.S.C. 401)

SEC. 2. (a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce **it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.**

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances **of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.**

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to **eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended,** and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentality's of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce.

(4) That prejudicial procedural error has occurred.

(1) It is procedural "ERROR" for an arbitrator to accept , and agree that Larry Thornton (Former General Chairman BRCA and a framer of some of the agreements) **could and "WOULD"** be the representative of the employees under NYD appendix III section 11 (a), and then make the opposite conclusion in his **"AWARD"** . Especially when accepting after ordering the Claimants to send $5,000.00 to cover his expenses and salaries. He also stated in letter to Carrier he was "morally" obligated to let them know the claimants had deposited a certain sum with him to start the process. (The Carrier did not think they had the money to fight this, and neither did the UNION).

(2) The Arbitrator did not look at the facts, have a finding of fact , pay any attention to exhibits and argument. The arbitrator emphasized, demanded, that Thornton(employee representative) could not look at the Carrier representative when talking . Philadelphia Lawyer (Carrier representative) . The arbitrator refused to "allow" any questions asked of either party by either party. The arbitrator asked ONE question : **"Mr. Thornton, all I want to know, is where do you get your "BASIS" for the Extra Board"?** I answered , the 1979, 1981 and 1983 extra bord agreement **mandated by ICC** and been in place since 1979 until now.

(3) The Carrier GTWRR and BRCA Joint Protective Board #200 James V. Waller both stated to the National Mediation Board (in letters) that these employees had NO claim under

these or any other agreements. That was saying (since Thornton) was not General Chairman , Waller and the Carrier could just unilaterally do away with the employees mandated ICC lifetime attrition agreements set as CONDITIONS for GTW to take over the DT&I and DTSL Railroads, at the GTWRR and RELA request. The Carrier and BRC was so gracious to come to agreement on a NEW attrition agreement in their 2001 CBA . Behind the scenes this is what Both rely upon to make it look legal , taking away these unsuspecting Carmen rights, privileges and benefits that even an Arbitrator is constrained from doing!

IN THE RECORD - (CITATIONS IN RECORD) "SUPPORTING THE CLAIMANTS"

SEE CARRIERS EXHIBITS :

1- 1979 AGREEMENT (THIS CAUSED EVERY CARMAN EMPLOYED WITH A SENIORITY DATE of before June 24, 1980 to be "DECLARED CERTIFIED AS ADVERSELY AFFECTED BY THE TRANSACTION IN ICC F.D. 28250 AND ICC F.D. 28676 . The enhanced protections (better than New York Dock) were put in place by the requirement of a "SINGLE WORKING AGREEMENT) IMPLEMENTING AGREEMENT IN 1981.

NOTICE SECTION 8 OF THE 1979 AGREEMENT : This was the formula needed to figure out how many and which carmen who were "FURLOUGHED" on the GTW-DTI-DTSL system would be paid dismissal or displacement allowance. This was addressed in the 1981 agreement and made the manner in which "FURLOUGHED" (emphasis for scrutiny to this claim).

2- THE SEPTEMBER 23, 1981 IMPLEMENTING AGREEMENT . AGREEMENT "H" OF THAT AGREEMENT WAS THE SINGLE WORKING AGREEMENT . This is what the Carrier and Union have determined is to be freely applied (ignoring and abrogating without agreement) the 1983 extra board which had been in place since 1983 and allowed the Carmen to "protect" their work by being called in on some days to work while drawing their extra board pay.

3. - THE MARCH 18, 1983 EXTRA BOARD AGREEMENT : This was negotiated to put in place of SECTION 8 of the 1979 agreement (conditions). SECTION 8 did not "require every furloughed carman would be paid , but only those who , with seniority order , fit into the gross ton mile formula . They were paid monthly and filled out work sheets etc. every week , turning it in to their respective supervisors. The Carrier wanted a less cumbersome manner in which to handle this dismissal pay. Thus the 1983 extra board agreement .

SEE - D. E. PROVER LETTER dated March 25, 1983 **(Attachment # 2)** to General Chairmen Grant and Klimtzak . His first sentence **["With reference to agreement dated March 18, 1983 (effective February 28, 1983) providing for the establishment of an extra board [IN LIEU OF DISPLACEMENT OR DISMISSAL ALLOWANCE] FOR EMPLOYEES WHO ARE [CERTIFIED AS ADVERSELY AFFECTED] ".** See para. 1 , 2 , see NOTE: , all page 1. SEE page 2 EXAMPLE , 3 paragraph , see 4

page 2 No. 4 Paragraph 1 of section I of agreement "H" dated September 23, 1981 reads in part as follows.:(in part) ;" **at a time that a BRC protected employee who is qualified , or has the fitness and ability to become qualified for such position "IS RECEIVING PROTECTION COMPENSATION as a "FURLOUGHED" employee pursuant to the September 4, 1979 agreement .**
(This clearly means the qualified Carman MUST be receiving [protection pay] in order to be transferred or the Carrier hire new employees. [this is what GTW and Union denied the Toledo carmen and about 60 others since the 2001 CBA.

SEE next paragraph. - Section II of agreement "H" . (in part) - May be offered to "FURLOUGHED" Carmen employees receiving protection compensation pursuant to the September 4, 1979 agreement.
(EVEN under this the Carmen had to be furloughed drawing protection pay!) Even before "offering them a position!
Mid paragraph: In view of the fact that the March 18, 1983 agreement provides for the placement of protected employees on an extra board **[IN LIEU of FURLOUGHING]** them "AND" paying them protection pay it is understood that where ever reference is made in Section II of Agreement "H" to "FURLOUGHED PROTECTED EMPLOYEES, RECEIVING PROTECTION COMPENSATION IS shall **BE CHANGED TO READ**: "protected employees **ON AN extra board AND principles set forth in Section II of Agreement "H" shall "henceforth" be applied to the latter employees**.

(This is made clear , concise , and indisputable that the carmen who were previously classed as "furloughed' would never be "FURLOUGHED" and NEVER were before , but were placed upon an extra board on the GTWRR and followed the provisions of the 1983 extra board agreement. The Carrier followed this and the Union since 1983.)

SEE Marilyn J. Kovac Declaration, Carrier Exhibit (P) - **(Attachment # 10)** She clearly states that the Carrier (GTWRR) is "REQUIRED" to establish an EXTRA BOARD . She also states that the Carrier has "always used Agreement "H" to transfer people. BOTH are true statements, "BUT". before Agreement "H" can be utilized, the provisions laid out in the 1983 agreement (which is a replacement for Section 8 of the 1979 agreement) and D.E. Provers letter of March 25, 1983 must be adhered to. .
(No furloughs!!!) placed on an extra board drawing extra board pay , protecting the work from the extra board . Then agreement "H" may be put into effect at the Carriers wishes, and provisions , step by step spelled out. BUT, first the carmen are to be PLACED ON AN EXTRA BOARD the same as has been done since 1983 .

(The arbitrator paid no attention to the exhibits and argument !) no redress here in this award. Just a set up and acceptance of the Carrier and union rip off of rights, privileges and benefits and extortion of those rights.) Many families are hurting bad now because they trusted the GTW and BRC and inn essence the STB. The Carrier and Union pay no attention to the mandated conditions the GTWRR pleaded with the ICC to impose and they did. This STB is asked only to honor what has been in effect since 1979 as far as labor protections are concerned on the GTWRR.

The arbitrator accepted $5,000.00 at his request to start this case. He determined the BOARD was a legally constructed Board (panel). His decision was contradictory , opposite ***and clearly out of context with reality*** . He denied the claim , (in which he said the employees never filed a "proper claim") AFTER he had stated emphatically the BOARD did not have JURISDICTION over this case. IF we did not have JURISDICTION then he was not free to deny a claim he stated did not exist .

SEE AWARD ATTACHED by Rinaldo , arbitrator. See Notice of appeal by Thornton , See **"dissenting opinion"** attached to award. This will alert the STB to the sequence which follows. **This may be more in place at the Department of Justice as well as vacating this award or agreeing with this appeal and reinstate the mandated protections the Carrier and Union abrogated.**

Clearly stated for the STB's understanding , for inserting this LMRDA section 401 , it is so as to inform and allege that the actions of the Carrier GTWRR and UNION BRCA-TCIU -JPB # 60 are acts in which it can be commonly construed were and "are" violations of LMRDA Section 401 in it's entirety AND ICC MANDATES , CONDITIONS IN THE 1979 master AGREEMENT . **Also the Standing ORDERS and FINDINGS of the STB in Finance Docket 33556.** It is believed by not following the stated intents by CN-GTWRR and ICRR to the STB concerning Labor matters and prior Protection agreements long standing (in place), possible "perjury" and fraudulent intent was made to the STB in the transaction 33556 by CNR-GTW-IC . The BRC members on GTWRR were victims of **extortion of their rights** within the BRC and GTWRR 2001 CBA and the abrogation of the employees 1983 extra board agreement in this case .

STATEMENT OF FACT'S :

1- The GTWRR (Carrier) did petition the ICC in 1979 to reopen the Petition filed by the N&WRR and B&ORR to purchase the DT&IRR . For one reason only did the ICC reopen the discussions , and that was to "accept" the "negotiated agreement between BRCA and GTWRR for "enhanced Labor Protections." More protections than in the New York Dock. SEE ICC 360 Report. This was and is a "Lifetime" protective agreement at the "wishes" of the GTWRR (Carrier). The Carrier GTWRR and the Union BRC-TCIU did abrogate and annul the 1979 mandated conditions and imposed Labor Protections by the ICC , by denying these carmen and others (about 60) their rights, privileges and benefits negotiated March 18, 1983 (Extra Board Agreement) through deception, apparent collusion , coercion , disregard for the employees mandated rights, breach of trust which all lead's to corruption . Their actions in this case and other abolishment's across the GTWRR since 2001 prove this. They have followed the "negotiated" CBA in 2001 instead of the past practice. There was NEVER a FURLOUGH of certified as adversely affected carmen on GTWRR since 1983. They were all placed on an extra board after NOTICE required..

2.- The 1979 agreement was made "the CONDITIONS" in which the ICC "Imposed" upon the GTWRR and UNION to comply with, in order that the late applicant GTWRR could and did

get the authority to take over the DT&I and DTSL railroads.This was referred to as the "Master" agreement by Unions and the Carrier on property.

3.- The 1979 agreement called for a **"Single Working Agreement" (Implementing Agreement)** to be in place in order that the enhanced provisions in the 1979 agreement would and could be enacted. This Implementing Agreement was agreed to September 21, 1981 , specifically noted that agreements B through H of the 1981 agreement was the Single working agreement . The em[ployees in this case NEVER stated the Carrier could not use Agreement "H" of the 1981 agreement. SEE EXHIBIT # 2.

The facts are; The Carrier was **required to establish an extra board** so the employees could protect their point and work . If there was no work the Carrier could offer them positions at other points (if applicable) and transfer according to the agreement "H".

4. - That 1981 agreement "F" in which it spelled out which carman employees would be certified as adversely affected and when. (ALL Carmen with a seniority date before June 24, 1980 were **"CERTIFIED as AVERSELY affected"** in the 1979 agreement . The 1979 agreement **Section 8**, clearly spells out the formula in which "furloughed" employees would be paid either displacement allowance or dismissal allowance . **(Paid Monthly).**

5. - The Carrier approached the BRCA General Chairmen, James Klimtzak, DT&IRR and Jerry Grant , GTWRR to negotiate a more suitable , less costly and less cumbersome manner in which to pay dismissal allowance and/or displacement allowance. .(To much paper work). I, Thornton was much involved in this 1983 agreement and was one of the "framers".

6. - The aforesaid requests and negotiations commenced.

7. - SEE Attachment # 2 ---It was agreed to , the **1983 "EXTRA BOARD AGREEMENT"** would "replace and substitute the monthly displacement allowance "entitlement" provided for in Section 5 (a) of "New York Dock" and the "entitlement" provided for in Section 6 (a) of "New York Dock". All "protected employees who are "certified as adversely affected" pursuant to Section B of Agreement "F" dated September 23, 1981 who would otherwise stand to be furloughed as a reduction in force will, during their "protective period, ***(Thornton insertion, LIFETIME, SEE The exhibit # 2 of this petition, for appeal for the complete 1983 agreement.)*** be placed on an EXTRA BOARD for four consecutive days each calendar week , excluding rest days , and will be "GUARANTEED" a minimum of 7 hours at the straight time rate of pay (including COLA) of carman Welder employees for each of the four days.

8. - The Carrier submitted their (2001) CBA , **EXHIBIT # 3** to the Arbitration Panel . The Carrier did not mention the CBA in the hearing. Thornton attempted to bring up the CBA , "BUT" the Arbitrator interjected; **" That CBA has nothing to do with this case."** . It appeared the Carrier and arbitrator did not want that CBA in the fore front , because the procedures therein "ARE" exactly what the Carrier and UNION are going by in closing facilities or abolishing positions. They "BOTH" have abrogated , done away with the Mandated Protections (lifetime) and the 1983 Extra Board agreement that has been past practice since 1983 until after **the 2001 CBA !** That CBA will be discussed in this appeal , because "IT" is the

illegal effective manner in which the CARRIER and UNION are operating , which is contrary to the STB Findings and Orders stated in this brief , Pages [redacted] through [redacted]

9 - SEE EXHIBIT # 6 — STB Finance Docket 33557 Decision No. 37 decided May 21 , 1999.

Page 40 footnote : BRC Div TCIU negotiated an Implementing Agreement . That Implementing agreement the employees never have seen , except an "UNSIGNED" copy of the pro ported Implementing agreement . SEE EXHIBIT # 6 with pertinent bulletins .

Page 41 first paragraph . This clearly covered TCIU claim that the employees would not have to follow work transferred to Canada under NYD and would still receive their benefits thereunder. This fit the "PRIOR" CONDITIONS and IMPOSED enhanced Labor Protections the GTWRR pleaded with the ICC in 1979 to accept and deny the N&W and B&O the right to acquire the DT&IRR and the DTSLRR. In 33556 The STB imposed "special" orders on the movement of work to Canada , thus protecting the employees from moving to Canada. The ICC gave special dispensation to the GTWRR and "accepted" GTWRR written and planned labor protections (enhanced) 1979 Master agreement and all subsequent negotiated agreements , 1981, 1983 extra bord agreement.

There was no over ride of a CBA before the STB approval in this transaction. ONLY after , April 9, 2001 did the Carrier GTWRR and BRC pull off this extortion of the entire BRC Carmen' s Mandated rights , privileges and benefits. **SEE EXHIBIT # 7 (2001 CBA)** . This is what brought on this case and others now in the appeal process's , and other claims supposedly brought forth by the Organization.

[THORNTON COMMENT]

This clearly was a coercive , fraudulent , covert , underhanded move (double the $400.00 signing bonus) to get early ratification before the members had an opportunity to see just what was in that CBA . Those members had not had a new contract since 1996 and had back-pay coming. The carmen (about 30) never was allowed the "RIGHT" to VOTE on that CBA although they paid BRCA Union dues and were affected by the stripping of the Carmen rights , privileges and benefits. That CBA passed by 12 votes. Had the members in question here in that "award" been allowed to vote the CBA would have been turned down for the third time.

Second provision: Additionally , upon payment of the above , all time claims , other than those involving discipline based on an occurrence prior to the effective date of this

agreement (APRIL 9, 2001) are "considered withdrawn without "president or prejudice ."

[THORNTON COMMENTS] It does not take a "Rocket Scientist" to see that the BRCA General Chairman James V. Waller and President Richard A. Johnson signed away with the Carrier , the long standing labor protections the GTWRR and RELA begged the ICC to accept by reopening the sale of the DT&I and DTSL in which N&W had the upper hand. They all did that together by negotiating the CBA in 2001 and signing this side letter #1 . Thus the "hurry up and ratify", we will give you $800.00 instead of the $400.00 .

That was cruel , calculated and premeditated . Johnson would not let the 30 BRC Carmen in Port Huron vote on their CBA in 2001.

The Neutral states; "Side Letter # 1 implicitly seeks to settle ALL matters of collective bargaining agreement interpretation occurring before April 9, 2001 . A MUTUALLY ACCEPTABLE FORMULA .

The point in all these comments is to bring to the STB attention , the UNION and CARRIER negotiated a CBA that was a result of F.D. 33556 and violated the standing ORDERS and FINDINGS of the STB in that transaction in the case in PLB and our case in the present "DISPUTE". Elaboration on 33556 to continue:

page 41 , Notice Footnotes. See last paragraph . STB as a last resort.

Page 42 , third paragraph . ATTD (and BRC) lifetime protections and 1996 . As a result of the merger in 1979.

Implementing agreement must be negotiated. NOTE: " Only if that process fails , and "APPLICANTS" claim that changes to be made in these CBA,s will it be necessary for an arbitrator to rule on these issues in the FIRST instance. And those arbitrators WILL BE constrained in the process not to ***change ANY "PROTECTED RIGHTS , PRIVILEGES or BENEFITS",*** and only to make those changes that are necessary to carry out this transaction. **[Thornton Comments]**The Carrier and union BRCA had been in negotiations on a NEW CBA since 1997 . The members turned that down twice before. ONLY after Johnson persuaded them this was the "best" they could get , denied 30 members the right to vote , the carrier "doubled" the signing bonus , Johnson told some members in Flint at a meeting they may be another YEAR before they get their "back pay" if they do not ratify now (2001). He never told them the Union and Carrier was subliminally taking their protection away from them.

SEE last paragraph: **Railroad Consolidated procedures** . The STB "MODIFIED" NYD for the TCIU Clerks. The ICC Accepted the GTWRR RELA labor protection in 1979 as CONDITIONS . Just as STB accepted the Union request and Made conditions for the TCIU members in 33556.

See footnotes: page 41 101 = modest adjustments to CBA,s . Read the 2001 CBA by Waller and Johnson.

page 55 -- Findings , SEE blocked in portion : **CBA (protection) subject to STB review to ASSURE fair and equitable treatment of affected employees.**

[THORNTON COMMENT] There has never been any material "fact" letter's etc. , Orders etc. showing where the CN -GTW-IC Railroads ever brought the 2001 CBA back to the STB to review to make sure that the Carrier and Union did not mistreat the "CERTIFIED as ADVERSELY affected BRC carmen on the GTWRR . **It must be construed ; That the STB would not allow the abolishment , abrogation , stealing of the ICC mandated protection , (1979 labor protections) mandated in F.D. 28676 negotiated in good faith by the BRC and GTWRR , signed and approved by the ICC .**

page 56 It is ORDERED:

4.- No changes or modifications shall be made without prior Board approval.

page 57 - no. 5 , 6. , 8 (Thornton comment) - These Carmen were not even afforded NYD protections let alone their mandated protection since 1979 .

Page 60 middle paragraph. in part ("In this regard , our decision also **HIGHLIGHTS** applicants recognition of the respect due to **"PRIOR" labor agreements** ".

See page 62 - see arrow paragraph. see footnote.

IN SUMMATION:

Some information contained in this appeal was not available or otherwise was not proper for the arbitration case . But is proper in this instance. **SEE (Attachment # 11)** a February 22, 2005 letter from GTWRR -CN Human Resource Manager Ms. Karen A McCarty. This "ALERTS" the STB that GTWRR and the Union have systematically abrogated the Carmen rights afforded in FD 28250 and 28676 and 33556. The Union "DID" file the Claim for these Battle Creek people. It brings to mind and **"Questions" WHY** , did they think the B.C. Carmen had labor protections and the Toledo Carmen did not in 2004? Also , NOT until I e-mailed the General Chairman Waller he better get my people back on the extra board under my side letter #2 or there would be much trouble, did he file for them in 2003 or 04 .

SEE attachment # 12 - Denial of Larry Thornton's Appeal trying at that time to stop the set up of stripping the Carmen rights as is ongoing right NOW!!! MY allegations of collusion back then are proven with the "activities" since then by both the carrier and UNION . The reason for "DENIAL " as stated, An internal Union matter (Which could not be settled between the members or if that fails , IN COURT .

The non representation issue can be a COURT matter and should be under Contract law. The abrogation of the Labor Protections mandated and Conditioned upon the 1979, 1981 and 1983 agreements (IMPOSED) by the ICC is an STB matter to enforce , EVEN by a declaratory INJUNCTION by the Chairman of the STB.

SEE Attachment # 13 = Letters claiming , proper NYD claim by TW Black and Thomas Sorge.

A CLEAR FACT: If only the union can represent employee's under NEW YORK DOCK , the stage is set for any union and carrier collusion to abrogate NYD labor protections.

Thank you for your patience and understanding. I was a General Chairman who cared about the people , members and their families. I am retired now , but still have the knowledge to do things right in these matters , and as a citizen , I am obligated to bring illegal acts to the Government and this is what has been done. If possible I want to be at an ORAL hearing on this with the Complainants . Thank you.

Sincerely

Larry G. Thornton

Larry G. Thornton (Employees representative)
3156 Nokomis trl.
Clyde , Mi. 48049 (810-984-8644)

DATED: APRIL-27-2005

PLEASE ACCEPT EXHIBIT D (PETION TO RE-OPEN RECORD BY GTWRR AND "MOTION" FOR FINDING THE AGREEMENTS (LABOR PROTECTION SATISY 11347) . This clearly shows GTWRR intent to live up to the petition and motion presented in good faith . Since the FD 33556 CN-GTW-IC have chjanged all of these promises made to the employees and the ICC.

QUESTIONS THAT NEED ANSWERED: See EXHIBIT E

appendix III section 11 (a) (in part) states : In the "event" the railroad (one party) , and it's employees (second party) OR their authorized representatives (third party) cannot settle ANY dispute or controversy with respect to interpretation, application or enforcement .....

1. - Can ONLY the Union and Carrier in agreement bring a dispute , (In which this is) to a Board of Arbitration , or are the workers (employees) , shut out of arbitration when the Carrier and UNION, team up against the employees to strip the employees of their Rights, Privileges and Benefits ?

Appendix III section 11 (a) (in part) states :Upon notice in writing served by one party (employees) on the other of the intent by that party (employees) to refer a dispute or controversy to an arbitration committee , each party (employees and Carrier) shall , within ten days , select ONE member of the Committee and the members thus chosen shall select a NEUTRAL member who shall serve as Chairman . (Thornton and Carrier never did select a member). IF ANY party (Carrier, Members, OR Union) fails to selects it's member of the arbitration committee within the prescribed time limit , THE GENERAL CHAIRMAN of the Labor Organization or the highest officer designated by the railroads , as the case may be , shall be "deemed" the selected member .....

2.- In the above portion of 11 (a) does that state ONLY the duly authorized party (third party) can represent the employees , OR does that state the Railroad (party second) and "its employees (Party one) may write it's intent for arbitration ?

3.- Does this portion state that "IF" any party fails (Party one) and (Party second) to selects a member for the committee , then it will be "DEEMED" that the General Chairman and Highest Carrier officer will be on that arbitration committee ?

4.- Does all the letters written by TW Black and Thomas Sorge to the Carrier requesting an EXTRA BOARD as negotiated in "good faith" between BRCA and GTWRR in the 1983 extra board agreement and the Carrier letters denying this claimed right, privilege and benefit constitute a "proper claim" under NYD arbitration resolutions of "DISPUTES" in which this case is about ?

5.- Does this "DISPUTE" fit the language of Appendix III section 11 (a) concerning "interpretation," " controversy" and "application" of NYD enhanced 1979, 1981 and 1983 agreements?

6.- Thornton, being a "Former General Chairman" and one of the "framers" of the 1981 and 1983 agreements (in communications with then General Chairman Klimtzak) and enforcing these agreements since 1980 as a local chairman and General Chairman , Does this STB believe the BRC General Chairman Waller and the ICRR Management "Team" together possess more knowledge of these agreements and have the interest of the employees at HEART than Larry Thornton , after reading this appeal ?

7. - Does this STB realize, that if the employees had not brought this dispute to the forefront , the Carrier and Union would (and are) continuing their abrogation of the ICC Conditions, labor protections IMPOSED in 1979?

8. - Was Larry Thornton the employee representative according to Appendix III section 11 (a) ?

9. - Can the Carrier and the UNION abrogate "LIFETIME" labor protections , when the only manner in which an employee can "LOSE" his protections are spelled out in the protections. Discharge for good reason (Fired) , expire (die) , resign (quit) or (retire) ?

These claimants never died, quit , got fired , and have not retired.

10.- Are the employees and their representative correct in believing in the case N&W versus NIMITZ , that case was brought by employees against the Carrier and Union for negotiating away rights, privileges and benefits ?

11.- Under the 1979, 1981 and 1983 agreements between BRC and GTWRR is the Carrier required to establish an extra board (in lieu) of furloughing Carmen (BRC) pay them their "protective pay" (74.9% , all H&W, one day RRU , count the days on the board as earned toward vacation , count the protective pay as RR credits each month , and Carrier and employees pay RRT) as defined in Marilyn Kovacs declaration and D.E. Provers letters March 25, 1983 to Klimtzak and Grant ?

12- Can and WILL the Chairman of the STB impose an INJUNCTION against the Carrier GTWRR and enforce the 1979, 1981 , 1983 agreements and FD 33556 ?

13.- Was it right for the arbitrator to accept the Philadelphia Lawyer as the spokesman for the Carrier but in his AWARD deny Thorntonn the right to be the spokesman for the employees ? Neither were Railroad personnel or Union personnel ?

14.- Can this STB enforce the mandated conditions and split off the non representation parts of this appeal for alternative action ?

Larry G. Thornton Larry G Thornton

CONTENTS

CONTENTS CONTINUED ;

14 = LETTER TO J. V. WALLER , GENERAL CHAIRMAN , CONCERNING THE 2001 CBA "ALL TIME CLAIMS TO BE WITHDRAWN". THAT SHOULD HAVE BEEN NYD CLAIM AND NO CBA CAN OVERRIDE LIFETIME MANDATED PROTECTION , NOT EVEN A CURE ALL SIDE LETTER No. 1.

15 = MS. LINDA MORGAN LETTER MARKED EXHIBIT A .

16 = MS. LINDA MORGAN LETTER DATED AUGUST 9, 2002, MARKED EXHIBIT B [BOARD CONCLUDED THE NON REPRESENTATION ISSUE WAS A UNION MATTER OR IN COURT .]

17 EXHIBIT D = Petition by GTWRR to re-open

EXHIBIT E = Appendix III section 11 (a)

5869-7592

Surface Transportation Board
Washington, D.C. 20423-0001

Office of the Chairman

May 15, 2001

Mr. Larry G. Thornton
1348 Colorado Ave.
Marysville, MI 48040

Dear Mr. Thornton:

Thank you for your letter regarding the Grand Trunk Western Railroad and certain issues related to the proper representation of carmen on that line. In that regard, I understand that you also have spoken with Nancy Beiter, an attorney in the Surface Transportation Board's Office of Congressional and Public Services. Ms. Beiter has told me of your support for this Board and its assistance to you and other rail employees. I appreciate your kind thoughts.

In the matter about which you have written, however, unfortunately I cannot offer you assistance on the issues that you raise. The matter may eventually come before the Board on appeal, and I would have to participate in the decision-making process at that time after hearing from all parties involved. Thus, I cannot articulate a position or take any other action at this time that might be viewed as prejudging the matter before it comes to me by way of an appeal.

I appreciate your interest in these issues. I will have your letter and my response made a part of the public docket for the Canadian National/Illinois Central merger proceeding. Please do not hesitate to contact Ms. Beiter if you have any further questions.

Sincerely,

Linda J. Morgan

Linda J. Morgan

EXHIBIT A

Surface Transportation Board
Washington, D.C. 20423-0001

Office of the Chairman

August 9, 2002

Mr. Larry G. Thornton
2736 River Road
Marysville, MI 48040

Dear Mr. Thornton:

This responds to your letter concerning your appeal in the oversight proceeding in STB Finance Docket No. 33556 (Sub-No. 4), Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company (General Oversight) (CN/IC Oversight). In your letter, you request a transcript of the "hearing of November 7, 2001," a copy of the applicants' response to your concerns, and consideration of your concerns in a pending enforcement proceeding involving Canadian National Railway Company (CN), ATOFINA Petrochemicals, Inc., and The Kansas City Southern Railway Company (KCS).

I have enclosed a copy of the Board's decision served November 7, 2001, in the CN/IC Oversight proceeding. I believe this is the "hearing" to which you refer in your letter. On page two of the Board's decision, you will note that your concerns regarding the proper representation of carmen on the Grand Trunk Western Railroad (GTW) are outlined. Although the decision states that your appeal in the CN/IC control case was filed more than a year late, the Board nevertheless considered your concerns expressed in three letters filed June 7, June 18, and July 13, 2001. After reviewing your complaint that certain officials in your labor union "colluded and conspired" with GTW and CN to deprive union members of seniority rights and other New York Dock labor protective benefits, the Board concluded that your complaint over representation was "an intra-union matter best resolved internally by the members of [your] particular union or, if that fails, in court." See CN/IC Oversight, at 2-3, n. 4.

Applicants CN/IC apparently did not respond to your complaint either because of its lateness, your failure to file it in the oversight proceeding pending at that time, or your failure to serve a copy of your appeal on the applicants' representative as required by the Board's rules. Although you request a response from the applicants, any one of these circumstances would have given applicants reason for not responding to your complaint. Finally, your request that the Board consider your concerns in its pending enforcement proceeding involving CN, ATOFINA Petrochemicals, Inc., and KCS cannot be granted due to the specific focus of that case and because you have not notified the participants of your involvement in that case.

EXHIBIT B

Mr. Larry G. Thornton

As I have done with your prior correspondence, I will have your letter and my response made a part of the public docket for the CN/IC merger proceeding. I appreciate your interest in this matter.

Sincerely,

Linda J. Morgan

Linda J. Morgan

Enclosure: November 7, 2001 decision

BEFORE THE
INTERSTATE COMMERCE COMMISSION
Washington, D.C.

GRAND TRUNK WESTERN RAILROAD COMPANY AND
GRAND TRUNK CORPORATION -- CONTROL --
DETROIT, TOLEDO & IRONTON RAILROAD
COMPANY AND DETROIT AND TOLEDO SHORE
LINE RAILROAD COMPANY

Finance Docket No. 28676 (Sub. No. 1F)

PETITION TO REOPEN RECORD TO RECEIVE LABOR
PROTECTIVE AGREEMENTS

AND

MOTION FOR FINDING THAT THE AGREEMENTS
SATISFY THE REQUIREMENTS OF SECTION 11347
OF THE CODIFIED ACT

Grand Trunk Western Railroad and Grand Trunk Corporation (hereafter "Grand Trunk") and the Railway Labor Executives' Association (hereafter "RLEA") jointly petition this Commission pursuant to Rule 84 of the Commission's Rules of Practice to reopen the record solely to receive labor protective agreements executed by representatives of the Grand Trunk and the labor organizations representing carrier employees affected by consummation of the transaction proposed by Grand Trunk in these proceedings. Joint petitioners also move that this Commission find that these agreements satisfy the requirements of 49 U.S.C. §11347.

GTW Wanted This

Exhibit D

A. The Filing of These Labor Protective Agreements Subsequent to Hearing is Consistent With the Ruling of the Administrative Law Judge, Rule 84 and the Commission's Obligation to Make Findings Concerning Labor Protection.

On the final day of hearings before Administrative Law Judge Richard H. Beddow, Jr., counsel for Grand Trunk described the progress of negotiations between representatives of Grand Trunk and the labor organizations representing employees of the Grand Trunk; Detroit, Toledo & Ironton (hereinafter "DT&I") and the Detroit and Toledo Shore Line (hereafter "Shore Line") railroads to reach agreements that, upon approval of Grand Trunk's application, provide for the protection of employees of each carrier and permit the consolidation of operations described in Grand Trunk's operating and work force plans. (T.4766-67, April 5, 1979). He requested leave to file any agreements once executed by the parties. Without objection, Judge Beddow consented to the filing of these agreements at a later date.

Counsel for RLEA, during oral argument on October 2, 1979, informed the Commission that all agreements had been successfully negotiated and that they awaited only final execution. (Argument, T.79). He stated that the agreements would be filed as soon as they were available.

The Commission must make findings concerning the degree to which labor protective agreements negotiated between applicants and labor representatives satisfy the requirements of Section 11347 of the Codified Act. See, Nemitz, et al. v. Norfolk and Western Railway Company, 436 F.2d 841, 846 (6th Cir. 1971), aff'd, 404 U.S. 37 (1971). This Petition must be granted in order to permit the Commission to make these findings.

B. The Labor Agreements Satisfy the Requirements of Section 11347.

Attached to this Petition and Motion are executed copies of labor agreements between Grand Trunk and the following labor organizations:

American Railway Supervisors Association
American Train Dispatchers Association
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employees
Brotherhood of Railway, Airline and Steamship Clerks
Brotherhood of Railroad Signalmen
Railroad Yardmasters of America
Railway Employees' Department, AFL-CIO
Brotherhood of Railway Carmen
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
International Association of Machinists and Aerospace Workers
Sheet Metal Workers' International Association
United Transportation Union

Re-defined Change of Position

These agreements incorporate provisions defining the protection to be accorded all members of these organizations who are employed by Grand Trunk, DT&I and Shore Line effective upon consummation of the transaction which Grand Trunk seeks to have approved in these proceedings. Grand Trunk and RLEA represent that these agreements satisfy the requirements of Section 11347, and move that findings to this effect be incorporated into any order approving Grand Trunk's application in these proceedings.

Section 11347 specifies that a carrier seeking Commission approval of the acquisition of control pursuant to Sections 11344 and 11345 be required " . . . to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under this section before Feruary 5, 1976, and the terms established under section 565 of title 45 [the Rail Passenger Service Act]." The section further provides that this arrangement may be made in an agreement between the rail carrier and the authorized representative of its employees, and must provide that " . . . the employees of the affected carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Commission (or if an employee was employed for a lessor period of time . . . , for that lesser period)."

Grand Trunk and RLEA represent that the attached agreements fulfill these requirements, and request findings to that effect.

C. Conclusion.

For the foregoing reasons, Grand Trunk and RLEA contend that there is good cause to grant the Petition to Reopen and to find that the attached labor agreements satisfy the requirements of 49 U.S.C. §11347.

Respectfully submitted,

Robert P. vom Eigen

William G. Mahoney
Joseph Guerrieri, Jr.
Highsaw, Mahoney & Friedman, P.C.
Suite 210
1050 - 17th Street, N.W.
Washington, DC 20036
(202) 296-8500

Attorneys for Railway Labor Executives' Association

Basil Cole
Robert P. vom Eigen
Dechert Price & Rhoads
888 17th Street, N.W.
Washington, DC 20006
(202) 872-8600

Attorneys for Grand Trunk

Dated: October 26, 1979

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served, by deposit in the United States mail, first class postage prepaid, or by messenger delivery, copies of the foregoing

PETITION TO REOPEN RECORD TO RECEIVE LABOR PROTECTIVE AGREEMENTS

and

MOTION FOR FINDING THAT THE AGREEMENTS SATISFY THE REQUIREMENTS OF SECTION 11347 OF THE CODIFIED ACT

upon counsel for all parties of record, the Honorable Richard H. Beddow, Jr., Administrative Law Judge, and Michael Erenberg. Copies of the Agreements accompanying this Petition and Motion will be made available to interested parties upon request to the undersigned.

Dated at Washington, D.C., this 26th day of October, 1979.

Robert P. vom Eigen

ROBERT P. VOM EIGEN
Dechert Price & Rhoads
888 17th Street, N.W.
Washington, D.C. 20006
(202)872-8600

9. Moving expenses.-Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed with three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbusement shall be paid under the provision of this section unless such claim is presented to railroad with 90 days after the date on which the expenses were incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. Arbitration of disputes.- (a) In the event the railroad and its employees or their authorized respresentatives cannot settle any dispute or controvesy with respect to the interpretation, application or enforcement of any provision of this appendix, except section 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to selects its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

EXHIBIT E

(1)

Sept 1979 Master Agreement

Carriers' File: M-20-12-01 (6)

Shop Crafts

AGREEMENT BETWEEN

GRAND TRUNK WESTERN RAILROAD COMPANY

AND THE

REPRESENTATIVES OF CERTAIN

RAILWAY LABOR ORGANIZATIONS

This Agreement by and between the Grand Trunk Western Railroad Company (GTW) and the representatives of the employees signatory hereto is made pursuant to the provisions of Section 11347 of the Interstate Commerce Act, as amended, and shall be effective upon Interstate Commerce Commission approval of the application of the GTW in Finance Docket No. 28676 (Sub. No. 1F).

Section 1. The terms and conditions imposed in New York Dock Railway - Control - Brooklyn Eastern District, 354 I.C.C. 399, as modified by the Commission's Decision served in that proceeding on February 23, 1979, ("New York Dock") shall be applied for the protection of the interests of employees of GTW, Detroit, Toledo & Ironton Railroad Company (DT&I) and the Detroit and Toledo Shore Line Railroad Company (DTSL), except as those terms and conditions are modified herein. Copy of New York Dock attached hereto and made a part hereof.

[redacted]

ATTACHMENT #1

[redacted]

(d) A protected employee who is furloughed for seasonal requirements shall not be furloughed in any twelve-month period for a greater period than he was furloughed during the twelve months preceding the date of acquisition.

Section 3. The protective period for a "protected employee" shall be from the date he is certified as adversely affected until he qualifies for early retiree major medical benefits provided under Group Policy GA-46000, except as otherwise provided in Article I, Section 5(c) and 6(d) of New York Dock.

Section 4. The provisions of Article I, Section 4(b) of New York Dock shall be inapplicable.

Section 5. Employees entitled to benefits under the provisions of Article I, Section 9 of New York Dock shall also be entitled to a relocation allowance of $900.00 and shall be protected against wage loss for a period not to exceed five (5) working days, in lieu of three (3) working days provided for in said Section 9.

X Section 6. The term "change of residence" shall mean a transfer of an employee's work location to a point located either (a) outside a radius of 30 miles of the employee's former work location and farther from his residence than was his former work location or (b) is located more than 30 normal highway route miles from his residence and also farther from his residence than was his former work location.

X Section 7. DTSL employees who are receiving dismissal allowances shall be obligated to accept a reasonably comparable position with the GTW or the DT&I which does not require a change in residence in order to maintain their protection hereunder.

See Exhibit 19 1981 Implement. agreement, Same as this

✓ Section 8. (a) This paragraph shall be applicable to the following labor organizations: Railway Employes' Dept., AFL-CIO; Brotherhood Railway Carmen of the United States and Canada; International Brotherhood of Boilermakers and Blacksmiths; International Brotherhood of Electrical Workers; International Brotherhood of Firemen and Oilers; International Association of Machinists and Aerospace Workers; Sheet Metal Workers' International Association.

Abrogated - Dnsert 1983 agreement

In the event of a decline in Carriers' (GTW, DT&I and DTSL) business, measured in terms of gross ton miles, in excess of ten (10) percent in any thirty (30) day period compared to the average for the sixty (60) month period immediately preceding the thirty (30) day period in which such decline occurs, a reduction in forces may be made at any time during the said thirty (30) day period below the number of employees entitled to preservation of benefits under this Agreement to the extent of one (1) percent for each one (1) percent the said decline

(NO GOOD)

ABROGATED MARCH 18-1983

exceeds ten (10) percent. Advance notice of any such force reduction shall be given as required by the current Working Agreement. Upon restoration of the Carriers' business following any such force reduction, employees entitled to preservation of employment must be recalled in accordance with the same formula within fifteen (15) days.

(b) This paragraph shall be applicable to the following labor organizations: _____

_____

_____

In the event of a decline in Carriers' (GTW, DT&I and DTSL) business, measured in terms of gross ton miles, in excess of five (5) percent in any given month compared to the average for the sixty (60) month period immediately preceding the month in which such decline occurs, the *monthly guarantee of the protected employees for that month will be decreased by the percent that the decline in business exceeds five (5) percent,e.g., if business declines 7.5% the monthly guarantee will be reduced by 2.5%.

* Note: Monthly guarantee is the average monthly compensation determined pursuant to principle set forth in Article I, Section 5(a) (2nd para.) and Section 6(a) of New York Dock.

Section 9. If a protected employee served as an agent or a representative of a class or craft of employees on either a full or part-time basis in the 12 months immediately preceding the date of acquisition his monthly guarantee shall be computed by taking the average of the average monthly compensation and average monthly time paid for of the two protected employees immediately above and below him on the same seniority roster or his own monthly guarantee, whichever is greater.

Section 10. Providing GTW and a labor organization shall have entered into a single working agreement pursuant to Section 11 hereof, GTW may serve a notice pursuant to Article I, Section 4 of New York Dock before the date of acquisition.

Section 11. This Agreement will be effective as to each labor organization upon the date of acquisition or the date upon which the labor organization and GTW come to agreement on a single working agreement for all the employees they represent on the GTW and DT&I, whichever date is later and the employees shall be entitled only to the protective conditions provided in Finance Docket No. 28676 (Sub. No. 1F) until such date. It is understood that DTSL employees shall be subject to such single working agreement only when and if the DTSL is acquired in its entirety by GTW.

June 24, 1980

Mr. James E. Yost, President
Railway Employees Department AFL-CIO

Mr. O.W. Jacobson, General President
Brotherhood of Railway Carmen of the U.S. & Canada

Mr. Harold J. Buoy, President
International Brotherhood of Boilermakers and Blacksmiths

Mr. Andrew M. Ripp, International Vice President
International Brotherhood of Electrical Workers

Mr. John J. McNamara, International President
International Brotherhood of Firemen & Oilers

Grand Trunk Western Railroad Co
131 West Lafayette Boulevard
Detroit, Michigan 48226

September 11, 1979

Our File: M-20-11-01(a)

Gentlemen:

With reference to Agreement dated September 4, 1979 made pursuant to Section 11347 of Interstate Commerce Act in connection with Finance Docket No. 28674 (Sub. No. 1F), and in particular Section 2 of such agreement. It is understood the following shall be added to Section 2:

"(e) Those discharged employees who are returned to service with full seniority rights but without back pay and who if they had not been discharged would have had an employment relationship on date of acquisition shall become 'protected employees' as of the date they become actively employed by their respective Carrier employer."

(f) Those discharged employees who are out of service on date of acquisition who are returned to service with full seniority rights and with back pay shall be considered to be a 'protected employee' as of the date they would have become a 'protected employee', if they had not been discharged."

Yours very truly,

Director, Labor Relations

ACCEPTED:

James E. Yost
J.E. Yost, President
Railway Employees Department AFL-CIO

O.W. Jacobson, General President
Brotherhood of Railway Carmen

Harold J. Buoy, President
International Bro. of Boilermakers & Blacksmiths

Andrew M. Ripp, International V.P.
International Bro. of Electrical Wrkrs

John J. McNamara, International President
International Brotherhood of Firemen & Oilers

Carrier's File: M-20-12-01

SHOP CRAFT EMPLOYEES:

RAILWAY EMPLOYES' DEPARTMENT,
AFL-CIO

James E. Yost
James E. Yost, President

BROTHERHOOD RAILWAY CARMEN OF
THE UNITED STATES AND CANADA

O. W. Jacobson
O.W. Jacobson, General President

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS
AND BLACKSMITHS

Harold J. Buoy
Harold J. Buoy, President

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS

Andrew M. Ripp
Andrew M. Ripp, Int'l. Vice President

INTERNATIONAL BROTHERHOOD OF FIREMEN
AND OILERS

John J. McNamara
John J. McNamara, International President

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS

John F. Peterpaul
John F. Peterpaul, Vice President

SHEET METAL WORKERS' INTERNATIONAL ASSN.

Richard E. Martin
Richard E. Martin, Vice President

GRAND TRUNK WESTERN RAILROAD
COMPANY

D. E. Prover
D. E. Prover
Director, Labor Relations

DATE: September 4, 1979

Our File: M-20-12-01

MEMORANDUM OF UNDERSTANDING

Re: Contracting of Maintenance of Equipment Work

This Memorandum of Understanding is attached to and made a part of the Agreement Between Grand Trunk Western Railroad Company (GTW) and the Representatives of Certain Railway Labor Organizations in connection with GTW's acquisition of the Detroit, Toledo & Ironton Railroad Company (DT&I) and the Detroit & Toledo Shore Line Railroad Company (DTSL) in Finance Docket No. 28676 (Sub. No. 1F).

It is understood that none of the work of the GTW, DT&I or DTSL coming within the scope of applicable Agreements between the Railroad Organization Members, Railway Employees Department AFL-CIO, and the above-listed Carriers shall be contracted or otherwise transferred to other establishments or employers except by agreement between the duly authorized representative of the Railway Employees Department and the GTW.

This understanding shall be applicable upon the date of acquisition of the DT&I, but shall not be applicable to the DTSL until such time as GTW has acquired said Carrier in its entirety.

Signed this 11th date of September, 1979.

FOR THE EMPLOYEES:

J.E. Yost, President
Railway, Employees Department AFL-CIO

O.W. Jacobson, General President
Brotherhood of Railway Carmen

Andrew M. Ripp, International V.P.
Int'l Bro. of Electrical Workers

FOR THE GRAND TRUNK WESTERN RR CO.

Director, Labor Relations

Harold J. Buoy, President
Int'l Bro. of Boilermakers & Blacksmiths

John J. McNamara, International President-
Int'l Bro. of Firemen & Oilers

M-20-12-01(6)

1983
Extra Board
Agreement

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD
DETROIT, TOLEDO & IRONTON RAILROAD
AND
BROTHERHOOD RAILWAY CARMEN OF THE U.S. & CANADA

It is the intent of the parties to provide a substitute in place of displacement and dismissal allowances for employees certified as adversely affected pursuant to Section B of Agreement "F" dated September 23, 1981. To that end it is agreed as follows:

1. Section 5 and 6 of Article II of "New York Dock" protective conditions which are attached to the September 4, 1979 Agreement, are modified only to the following extent:

(a) (1) The following shall be substituted in place of the monthly displacement allowance entitlement provided for in Section 5(a) of "New York Dock" and the monthly dismissal allowance entitlement provided for in Section 6(a) of "New York Dock": All protected employees who are certified as adversely affected pursuant to Section B of Agreement "F" dated September 23, 1981 who would otherwise stand to be furloughed as a result of a reduction in force will, during their protective period be placed on an extra board for four consecutive days each calendar week, excluding rest days, and will be guaranteed a minimum of 7 hours at the straight time hourly rate of pay (including COLA) of a Carmen Welder employee for each of the four days.

Attachment #2

56

[redacted] Employees may be used from the Extra Board (1) to fill vacancies of regular assigned employees who are off for a period of time not exceeding one week and (2) to fill vacancies on newly created five-day positions of less than thirty (30) calendar days (see Rule 14) which are not otherwise filled by regular assigned men.

[redacted] The four days on the extra board shall be any four consecutive days in the week i.e., Monday, Tuesday, Wednesday, Thursday; Tuesday, Wednesday, Thursday, Friday; etc. The manner in which employees will be assigned to and called from the extra board will be agreed upon locally, however, it is understood employees will be called from the extra board on a rotary basis.

[redacted] In providing for the establishment of an Extra Board for protected employees who would otherwise stand to be furloughed, it is not the intent of the parties to circumvent the provisions of Rule 1 of the Working Agreement.

[redacted] Rule 22 - Reduction of Forces - is amended so as to provide that in restoration of forces, employees on the extra board will be placed on bulletined regular assignments or 30-day vacancies not otherwise bid in, in seniority order; such employees will also be placed on vacancies or newly created positions of less than 30 days (See second paragraph of Rule 14) not otherwise filled by regular assigned employees, in seniority order.

[redacted] Time (compensation) paid to an employee for work performed on days he is not on the extra board will not be applied towards the four-day guarantee provided in paragraph (a).

[redacted]: An employee is on the extra board on Monday, Tuesday, Wednesday and Thursday and is not called on any of the four days. On Friday he is called and works. Such employee would be entitled to seven hours straight time for Monday, Tuesday, Wednesday and Thursday as well as the compensation for working on Friday.

[redacted] If an employee is called to work on a day when he is on the extra board, time (compensation) paid for such day will only be applied towards the guarantee for such day.

[redacted] Time (compensation) lost by an employee account of voluntary absences, including absence account sickness or injury on days he is on the extra board will be applied towards his guarantee.

[redacted] Time (compensation) lost by an employee account of missing, evading or refusing calls on days he is on the extra board will be applied towards his guarantee.

NOTE: If Carrier is unable to fill a vacancy(s) by calling extra board employees only the first out employee(s) who missed, evaded or refused a call will have the time

(compensation) lost applied towards his (their) guarantee. The application of the time (compensation) lost formula shall be on a one-to-one basis, i.e., if there is one vacancy only one employee can have time (compensation) lost applied towards his guarantee; if there are two vacancies only two employees can have time (compensation) lost applied towards their guarantee, etc.

[redacted] Time (compensation) lost by an employee account of absence due to emergency conditions, such as flood, snow storm, hurricane, earthquake, fire or strike on days he is on the extra board will be applied towards his guarantee.

[redacted] Protected employees entitled to guarantee payments under the provisions of this Agreement shall be entitled to the same Health, Welfare and Life Insurance Benefits during their protected period as the same class of employees who are employed full time.

[redacted] [redacted] Days not worked by an employee on the extra board for which he is paid pursuant to the provisions of this Agreement shall be counted in computing days of compensated service and years of continuous service for vacation and Holiday pay qualifying purposes as the same class of employees who are employed full time.

[redacted] An extra board employee who is off on vacation will not be entitled to any guarantee pay under the provisions of this Agreement for the period of time he is on vacation, i.e., there will

be no duplication of payment for the same period of time.

[redacted] Extra board employees will not be subject to call while on vacation.

[redacted] If an employee qualifies for and is paid Holiday pay for a Holiday such pay will be applied towards the guarantee provided in this Agreement if the Holiday falls on a day the employee is on the extra board. An employee who is called from the extra board and works on a Holiday will be paid pursuant to Rule 3(a) (*Holiday Work) of the Working Agreement.

[redacted] If an employee is on the extra board Monday, Tuesday, Wednesday and Thursday and is not called while on the extra board and is paid Holiday pay for Monday, he will be paid seven hours straight time for Tuesday, Wednesday and Thursday.

[redacted] Protected employees who are on the Extra Board but who are not eligible for unemployment benefits shall be paid according to the following formula:

[redacted] If no time is worked by the employee during the three days of the week he is not on the extra board: $25.00

[redacted] If an employee is paid Holiday pay for one of the three days he is not on the extra board or works on any of the three days he is not on the extra board: Nothing.

The payment provided in this Section 4 shall be in addition to any guarantee payment and any compensation the employee receives for service performed during the period of time he is on the Extra Board.

[redacted] Section 8 (GTM formula) of the September 4, 1979 Agreement pertaining to employee protection in connection with G.T.W.'s acquisition of the D.T.&I. Railroad is abrogated.

[redacted] This Agreement to be effective February 28, 1983 and shall remain in effect until changed in accordance with the Railway Labor Act as amended.

FOR THE EMPLOYEES:

Jerry H. Grant
General Chairman

James A. Klentzak
General Chairman

FOR THE GRAND TRUNK WESTERN RAILROAD
AND DETROIT, TOLEDO & IRONTON RAILROAD

D. C. Grover
Director, Labor Relations

Detroit, Michigan

Date: [redacted]

Grand Trunk Rail System
131 West Lafayette Blvd.
Detroit, Michigan 48226

March 25, 1983

Our File: M-20-12-01 (6)

Mr. J. H. Grant, Jr., General Chairman
Brotherhood Railway Carmen of U.S. & Canada
3047 Charmwood Drive
Port Huron, Michigan 48060

Mr. J. A. Klimtzak, General Chairman
Brotherhood Railway Carmen of U.S. & Canada
P.O. Box 284
West Seneca, New York 14224

Gentlemen:

The following appears in Section 1(a)(2) of the March 18, 1983 Agreement:

"(2) Employees may be used from the Extra Board (1) to fill vacancies of regular assigned employees who are off for a period of time not exceeding one week and (2) to fill vacancies on newly created five-day positions of less than thirty (30) calendar days (see Rule 14) which are not otherwise filled by regular assigned men.

NOTE 1: The four days on the extra board shall be any four consecutive days in the week i.e., Monday, Tuesday, Wednesday, Thursday; Tuesday, Wednesday, Thursday, Friday; etc. The manner in which employees will be assigned to and called from the extra board will be agreed upon locally, however, it is understood employees will be called from the extra board on a rotary basis."

The following appears in Section 1(c)(3):

"Time (compensation) lost by an employee account of missing, evading or refusing calls on days he is on the extra board will be applied towards his guarantee."

In the application of Section 1(c)(3) it is understood that an employee on an extra board will only be subject to call for a period of 2 1/2 hours, i.e., 2 hours prior to and 1/2 hour after the regular starting time of the vacancy to be filled.

EXAMPLE 1: There is a vacancy on an 8:00 a.m. assignment. An employee on the extra board is called for the vacancy at 7:30 a.m. or during the 2 1/2 hour call period and misses a call. The time lost by such employee will be applied towards the guarantee pursuant to Section 1(c)(3).

EXAMPLE 2: There is a vacancy on an 8:00 a.m. assignment. An employee on the extra board is called for the vacancy at 8:45 a.m., or outside the 2 1/2 hour call period and misses a call. The time lost by the employee in this instance will not be applied towards the guarantee.

Yours very truly,

D. E. Prover
Director, Labor Relations

ACCEPTED:

General Chairman

General Chairman

Grand Trunk Rail System
131 West Lafayette Blvd.
Detroit, Michigan 48226

March 25, 1983

Our File: M-20-12-01(6)

Mr. J. H. Grant, Jr., General Chairman
Brotherhood Railway Carmen of U.S. & Canada
3047 Charmwood Drive
Port Huron, Michigan 48060

Mr. J. A. Klimtzak, General Chairman
Brotherhood Railway Carmen of U.S. & Canada
P.O. Box 284
West Seneca, New York 14224

Gentlemen:

With reference to Agreement dated March 18, 1983 (Effective February 28, 1983) providing for the establishment of an extra board in lieu of displacement or dismissal allowances for employees who are certified as adversely affected.

The following understandings are agreed to:

1. If it develops that there are disputes arising out of alleged missed calls by employees on the extra board necessary procedures to overcome the problem will be established.

2. An employee who is on the extra board the first four days of the week and is called and works on the fifth day of his so-called work week will be paid straight time for the first eight hours he works on such day; (if such employee is called and works on the sixth and seventh day of his so-called work week he will be paid at the rate of time and one-half, for the sixth and seventh day, except as otherwise provided in the Note below. For the purpose of this understanding the work week for an employee on the extra board shall start on the first day of the week an employee is on the extra board.

   NOTE: If the above described employee either works or is paid the guarantee for each day he is on the extra board and works the fifth and sixth day he will be paid at double the basic straight time rate for service performed on the seventh day. (See Article V of April 24, 1970 National Agreement.)

EXAMPLE: An employee's assignment on the extra board is Monday, Tuesday, Wednesday and Thursday. He either works or is paid the guarantee for each of the four days. He is called and works Friday (fifth day), Saturday (sixth day) and Sunday (seventh day) and works eight hours each day. He would be paid the straight time rate for Friday; the time and one-half rate for Saturday and double the basic straight time rate for Sunday.

3. Section 4(a) of the March 18, 1983 Agreement provides for the payment of $25.00 for employees not eligible for unemployment benefits. In the event the daily unemployment benefits paid to unemployed railroad employees (now $25.00 per day) is increased the payment provided in Section 4(a) will be increased to correspond to the daily unemployment benefits.

4. Paragraph 1 of Section I of Agreement "H" dated September 23, 1981 reads in part as follows:

"It is also the intent and purpose of this Agreement that the G.T.W. or D.T.&I. Railroad will not be required to hire a new employee at any point for a position that is subject to the G.T.W. - D.T.&I. - B.R.C. Working Agreement at a time that a B.R.C. protected employee who is qualified or has the fitness and ability to become qualified for such position is receiving protection compensation as a furloughed employee pursuant to the September 4, 1979 Agreement."

Section II of Agreement "H" provides that permanent un-filled vacancies which would require the hiring of a new employee may be offered to furloughed protected employees receiving protection compensation pursuant to the September 4, 1979 Agreement. In view of the fact that the March 18, 1983 Agreement provides for the placement of protected employees on an extra board in lieu of furloughing them and paying them protection pay it is understood that wherever reference is made in Section II of Agreement "H" to furloughed protected employees receiving protection compensation it shall be changed to read: "protected employees on an extra board" and the principles set forth in Section II of Agreement "H" shall henceforth be applied to the latter employees. As soon as possible Section II will be revised to reflect the aforementioned changes.

Change to Extra Board + Board in lieu of furlough DC Case

5. Employees on the extra board who have qualified for a vacation will be granted vacation with pay as set forth in Rule 122 - Vacations - of the Working Agreement.

The understandings set forth herein shall be effective March 18, 1983.

Yours very truly,

D. E. Prover
Director, Labor Relations

ACCEPTED:

General Chairman, B.R.C.

General Chairman, B.R.C.

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
BROTHERHOOD RAILWAY CARMEN OF U.S. & CANADA

IT IS AGREED:

I. In the event a Certified Protected employee represented by one of the other Shop Craft Organizations signatory to the September 4, 1979 Agreement is awarded a regular position and establishes seniority in the Carmen's Craft such employee will be considered a Certified Protected employee in the Carmen's Craft.

EXAMPLE: John Jones is a Certified protected Laborer in the Firemen and Oilers Craft. John applies and is awarded a Carman Helper position in the Carmen's Craft. As a result of this move John establishes seniority in the Carmen's Craft. Since John was a Certified protected employee in the Firemen and Oilers Craft he would be considered a Certified Protected employee in the Carmen's Craft.

II. In the event a protected employee represented by one of the other Shop Craft organizations signatory to the September 4, 1979 Agreement is awarded a regular position and establishes seniority in the Carmen's craft he will become a certified protected employee on the date that he stands to be called back to service for a regular position in the other craft provided he forfeits his seniority in the other craft and would have otherwise become a certified protected employee in the other craft if he had returned to service in such craft.

EXAMPLE: John Jones is a furloughed protected Laborer in the Firemen and Oilers Craft with a seniority date prior

to June 25, 1980 who has not as yet been certified as an "adversely affected" Laborer. John applies and is awarded a Carman Helper position in the Carmen's Craft on April 15, 1983. On February 15, 1984 John is called to return to service as a regular assigned Laborer at which time he would become certified as "adversely affected" pursuant to paragraph 2 of Section B of Laborers' Agreement "F" dated March 1, 1982 if he returned to service as a Laborer. At this time John elects to forfeit his seniority as a Laborer and remain in the Carmen's Craft. John would become certified in the Carmen's Craft as of February 15, 1984.

III. This Agreement is effective as of Feb 28, 1983.

FOR THE EMPLOYEES:

Joseph N. Grant
General Chairman - B.R.C. - G.T.W.

James A. Kleinfeldt Jr.
General Chairman - B.R.C. - D.T.&I. and former D.T.S.L.

FOR THE GRAND TRUNK WESTERN RAILROAD
AND DETROIT, TOLEDO & IRONTON RAILROAD

D. C. Grover
Director, Labor Relations

DATE: 5-31-83

BROTHERHOOD RAILWAY CARMEN DIVISION
TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION
Affiliated with A.F.L.-C.I.O. and C.L.C.

Finley Lines Joint Protective Board No. 200

127 BARON CIRCLE
CORRYTON, TENN 37721

J. V. WALLER
GENERAL CHAIRMAN

TELEPHONE
865-992-5670
FAX 865-992-0817

April 10, 2001

TO: Brother Brian Crowley - Local Chairman Lodge 6318
Brother R. H. Gerrow - Local Chairman Lodge 6327
Brother Jeff Pluymers - Acting Local Chairman Lodge 6638

SUBJECT: AGREEMENT DATED APRIL 9, 2001

Dear Sirs and Brothers:

Please find enclosed with this letter a copy of the signed Agreement dated April 9, 2001, Attachment "A" which is the Carmen's hourly basic rate of pay schedule from 12/31/97 through 1/1/2004 along with Side Letters 1 and 2. This Agreement was reached after a long series of negotiations with the Grand Trunk Western after our Section 6 Notice that was filed September 8, 1997. This Agreement was ratified by our Members by a vote of ninety one (91) yes votes and seventy nine (79) no votes that was completed on April 4, 2001.

You will note that the Carrier is required to make the monetary payments that were agreed to within sixty (60) days of April 4, 2001. The Agreement will also become effective sixty (60) days after April 4, 2001, this being the date the Carrier was notified that the Agreement was ratified. You should also note that the new health plan will become effective June 1, 2001. This should give the Carrier and our Members ample time to make the necessary changes. In the near future our Members should be receiving information about this plan. The new 401K plan will also take effect on June 1, 2001. This should also be ample time for this change over. You should also note that neither party may serve any future notices concerning wages, rules and health and welfare until September 1, 2004, to become effective January 1, 2005.

I want to personally thank both you and the Members that you represent for your patience and understanding through this long and trying process. If you have any questions concerning the application of this Agreement, please do not hesitate to contact this office.

ATTACHMENT #3

Fraternally,

J. V. Waller
General Chairman
Joint Protective Board No. 200
BRC Division TCU

JVW/lmw
Enclosures

CC: Brother R. A. Johnson, GP
Brother Marvin Napier, AGP
Brother Jack Wright, AGC/GST
Brother Robert Elswick, VLC - Lodge 6327
Brother Kieth Norton, Committeeman - Lodge 6638

AGREEMENT
between the
GRAND TRUNK WESTERN RAILROAD INCORPORATED
and its employees represented by the
BROTHERHOOD OF CARMEN DIVISION
TRANSPORTATION COMMUNICATIONS UNION

ARTICLE I - WAGES

Section 1 - Signing Bonus

A lump sum signing bonus in the amount of $400.00 shall be made to employees covered by this agreement who have an active employment relationship with the company under the agreement with the organization signatory hereto on the date of this agreement. There shall be no duplication of the signing bonus payment by virtue of employment under another agreement nor will such payments be used to offset, construct or increase guarantees in protective agreements or arrangements.

Section 2 - General Wage Increase

Effective January 1, 1998, all hourly, daily and monthly rates of pay shall be increased retroactively by 3%.

Section 3 - General Wage Increase

Effective January 1, 1999, all hourly, daily and monthly rates of pay shall be increased retroactively by 3%.

Section 4 - General Wage Increase

Effective January 1, 2000, all hourly, daily and monthly rates of pay shall be increased retroactively by 3%.

Section 5 - General Wage Increase

Effective January 1, 2001, all hourly, daily and monthly rates of pay shall be increased retroactively by 3%.

Section 6 - General Wage Increase

Effective January 1, 2002, all hourly, daily and monthly rates of pay shall be increased by 3%.

Section 7 – General Wage Increase

Effective January 1, 2003, all hourly, daily and monthly rates of pay shall be increased by 3%.

Section 8 – General Wage Increase

Effective January 1, 2004, all hourly, daily and monthly rates of pay shall be increased by 3%.

Section 9 - Eligibility and Payment

The signing bonus provided for in Section 1 shall be payable only to employees who have an active employment relationship with the company on

the date of this agreement having an active employment relationship under Section 1 includes employees who are furloughed (other than those on voluntary furlough status options) or those on leave of absence, such as sick, personal or injury leave unless they have applied for a Railroad Retirement Act disability annuity as of the date of this agreement and are subsequently granted such annuity.

The retroactive portion of the general wage increases provided in Sections 2, 3, 4 and 5 in this Article I shall be payable only to employees who have an active employment relationship with the company which includes employees who are furloughed (other than those on voluntary furlough status options) or those on leave of absence, such as sick, personal leave or injury leave or to employees who have retired or died subsequent to January 1, 1998.

The payments due eligible employees under Sections 1, 2, 3, 4 and 5 of this Article I shall be payable within sixty (60) days of April 4, 2001, the date that the company received written advice of the ratification of this agreement.

Rates of pay in effect throughout the term of this agreement are listed in Attachment A.

ARTICLE II - DIRECT DEPOSIT

Effective May 1, 2001, all employees will be paid weekly or bi-weekly to the direct deposit account he or she designates.

ARTICLE III - BEREAVEMENT

Effective May 1, 2001, the present Bereavement Rule is abrogated and the following is substituted therefor:

> A regularly assigned employee who has been in service one year or more shall be entitled to leave of absence with pay not to exceed three (3) work days after the date of death for the time necessary to attend funeral and handle matters related thereto in the event of the death of an employee's spouse, child, parent, parent-in-law, brother, sister, grandparent, grandchild, step-parent or step-child. The three (3) days bereavement leave must be taken within seven (7) calendar days after the date of death. In such cases, a minimum basic day's pay at the rate of the last service performed will be allowed for the number of working days lost during bereavement leave. There shall be no duplication of payment in the event that the bereavement leave period falls within paid vacation, other bereavement leave and/or holiday time. Employees involved will make provision for taking leave with their supervising officer in the usual manner. An employee claiming pay under this Article must furnish reasonable proof of death.

ARTICLE IV - EMPLOYEE PROTECTION / CONTRACTING OUT / EMPLOYMENT LEVEL

(a) All employees who are in active service on April 9, 2001 will be retained in service as a carman unless or until retired, discharged for cause, or otherwise removed by natural attrition.

(b) Employees may be required to relocate anywhere on the GTW or IC to retain the benefits of paragraph (a). Employees who are required to relocate will be entitled to the relocation benefits contained in the September 25, 1964 National Agreement, as subsequently amended.

(c) Notwithstanding other provisions of this Article, the company shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part because of such emergencies. When forces have been so reduced, and thereafter as operations are restored upon termination of the emergency, employees entitled to preservation of employment will be recalled.

(d) Provided the total number of active employees remains at a level of no less than one hundred sixty (160), the company will have the unilateral right to contract out work within the scope of this agreement and shall not be required to give advance notice of intent to the organization.

(e) The provisions of paragraph (d) remain in effect when forces are temporarily reduced when a suspension of operations in whole or in part is due to a labor dispute between the company and any of its employees and during temporary force reductions under emergency conditions, such as flood, snowstorm, hurricane, tornado, earthquake, fire, or a

labor dispute other than as identified above, provided that such conditions result in suspension of operations in whole or in part.

(f) In the event the number of active employees falls below the level specified in paragraph (d) for a period of sixty (60) consecutive calendar days, the provisions of Article II, Subcontracting, of the September 25, 1964 National Agreement, including all amendments through the November 27, 1991 Imposed National Agreement, the December 9, 1991 GTW-BRC Agreement and the January 10, 1996 GTW-BRC Agreement, shall apply until such time as the number of active employees is again equal to or greater than that specified in paragraph (d).

(g) The number of active employees specified in Paragraph (d) is based on the condition of the business on the GTW as it exists as of April 9, 2001. In the event conditions of the railroad change such that would require a significant change in the number of active employees specified in paragraph (d), said number shall be subject to renegotiation between the company and the organization.

(h) If the parties are unable to agree to the specified number of active employees, either party may submit the dispute to final and binding arbitration. Each party will submit its proposed number to the arbitrator with supporting argument, and the arbitrator will select one of the two

which will occur as a result of the expiration of the moratorium contained in the September 9, 1996 National Agreement. In the event either party to this agreement believes the equivalency is changed to a significant extent, the issue shall be subject to re-negotiation.

(c) If the parties are unable to resolve the issue in accordance with paragraph (b), either party may submit the dispute to final and binding arbitration. Each party will submit its proposal to the arbitrator with supporting argument, and the arbitrator will select one of the two proposals.

ARTICLE VI – 401k

Effective June 1, 2001, employees covered by this agreement will be eligible to participate in the Illinois Central Union 401(k) plan. Under the plan, for the first four percent (4%) of an employee's salary contributed, the company will contribute $.25 for each $1.00 contributed by the employee. The employee may contribute an amount above 4% up to the maximum of 20%, with no company participation.

Effective June 1, 2001, contributions to existing GTW 401(k) plans will no longer be made and funds in existing GTW 401(k) plans will be transferred to the IC 401(k) plan as soon as legally permissible.

ARTICLE VII - SAVINGS CLAUSE

All rules, agreements, provisions, conditions or practices, however established, which may conflict with this agreement are superseded by the provisions of this agreement. The parties exchanged various proposals antecedent to adoption of various Articles that appear in this agreement. It is our mutual understanding that none of such antecedent proposals and drafts will be used by any party for any purpose and that the provisions of this agreement will be interpreted and applied as though such proposals and drafts had not been used or exchanged in the negotiation.

ARTICLE VIII - EFFECTIVE DATE OF AGREEMENT

Except as otherwise provided for herein, this Agreement shall become effective sixty (60) days following the date the company receives written advice of ratification of this agreement.

ARTICLE IX - MORATORIUM

This agreement is in full and final settlement of the Organization's Section 6 Notice dated September 8, 1997 and all other pending notices.

All rules, practices and agreements in effect between the Grand Trunk Western Railroad Incorporated and the Organization, unless specifically

ATTACHMENT "A"
to the
April 9, 2001 BRC Agreement

Carman Hourly Basic Rate of Pay

Current Hourly Rate $16.53	4/9/2001 Hourly Rate $18.90
1/1/1998 Hourly Rate $17.03	1/1/2002 Hourly Rate $19.47
1/1/1999 Hourly Rate $17.54	1/1/03 Hourly Rate $20.05
1/1/2000 Hourly Rate $18.07	1/1/2004 Hourly Rate $20.65
1/1/2001 Hourly Rate $18.61	

Labor Relations
Canadian National Railway
(Grand Trunk District)
2800 Livernois, Suite 300
P.O. Box 5025
Troy, MI 48007-5025

April 9, 2001
Our File: 8000-689
Side Letter No. 1

Mr. J. V. Waller, Jr., General Chairman
Brotherhood Railway Carmen - Division
Transportation Communications Union
127 Baron Circle
Carryton, TN 37721

Dear Sir:

This will confirm our understanding that the signing bonus payment provided in Article I, Section 1, of the April 9, 2001 Agreement is doubled because the company received written advice of the ratification of this agreement on or before April 14, 2001.

Additionally, upon payment of the above, all time claims, other than those involving discipline based on an occurrence prior to the effective date of this agreement, are considered withdrawn without precedent or prejudice.

Please indicate your concurrence by signing in the space provided below.

Yours very truly,

M. J. Kovacs
Senior Manager Labor Relations

AGREED:

J. V. Waller - General Chairman

Date: April 9, 2001

W:hr\unions\side#1.doc

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6774

BROTHERHOOD OF RAILWAY CARMEN DIVISION TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION	) Case No. 10
and	) Award No. 8
CANADIAN NATIONAL/ GRAND TRUNK WESTERN RAILROAD CORPORATION	)

Martin H. Malin, Chairman & Neutral Member
A. M. Novakovic, Employee Member
M..J. Kovacs, Carrier Member

Hearing Date: August 17, 2004

STATEMENT OF CLAIM:

1. That the Grand Trunk Western Railroad Company - Canadian National violated the terms and provisions of our current Agreement when they failed and/or refused Carmen employees who were hired by PDS Rail Car Services on December 31, 1996 the opportunity to participate in labor protective Agreements as specified in Side Letter No. 2 to the January 10, 1996 Agreement after they were furloughed from PDS Rail Car Services on March 7, 2001. A complete list of those employees who initially accepted employment with PDS can be found in Exhibit A, page 7. This list includes thirty six (36) employees which begins with F. Meddaugh and continues through K. Thomas.

2. That now, as just and proper relief, the Grand Trunk Western Railroad Company - CN now be required to provide all these Carmen employees with any/all of the protective conditions that are contained in Side Letter No. 2 of the January 10, 1996 Agreement. Also, that these identified Carmen be completely compensated for any and all lost work opportunities that they may have lost as a result of not being recognized as Protected employees and placed on the Carrier's "extra board", or returned to full employment with the Company. This to include vacation rights and pay for same, along with all Health and Welfare benefits being fully restored. All said relief to retroactive to the furlough date with PDS of March 7, 2001.

ATTCh. 4
Exhibit #
247

FINDINGS:

Public Law Board No. 6774, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act. as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On April 9, 2001, the parties entered into Side Letter No. 1, which provides:

> This will confirm our understanding that the signing bonus payment provided in Article I, Section 1, of the April 9, 2001 Agreement is doubled because the company received written advice of ratification of this agreement on or before April 14, 2001.
>
> Additionally, upon payment of the above, all time claims, other than those involving discipline based on an occurrence prior to the effective date of this agreement, are considered withdrawn without precedent or prejudice.

LT CBA CANNOT TAKE AWAY ICC PROTECTIONS

It is apparent from the specifics of the claim that the incident giving rise to the dispute occurred on March 7, 2001. Side Letter No. 1 implicitly seeks to settle all matters of collective bargaining agreement interpretation occurring prior to April 9, 2001. Therefore, Side Letter No. 1 provided a mutually acceptable formula for resolution of disputes before its effective date. The instant claim falls within the settlement parameters established by the parties and must be dismissed.

AWARD

Claim dismissed.

Martin H. Malin, Chairman

M. L. Kovacks
Carrier Member

A. M. Novakovic,
Employee Member

Dated at Chicago. Illinois, January 5, 2005

Exhibit #3
3 of 7

BROTHERHOOD RAILWAY CARMEN DIVISION
TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION
Affiliated with A.F.L.-C.I.O.

Norfolk Southern Joint Protective Board No. 200

127 BARON CIRCLE
CORRYTON, TENN 37721

J. V. WALLER
GENERAL CHAIRMAN

TELEPHONE
865-992-5670
FAX 865-992-0817

February 24, 2005

RE: PLB No. 6774 - Case No. 10 - Award 8
File No. 8405-BRC-1188
Claimants: Carmen F. Meddaugh, et al

Brother Brian Crowley
Local Chairman - Lodge 6318
Pontiac, Michigan

Dear Sir and Brother:

Enclosed with this letter you will find a copy of a letter from Brother Alex Novakovic - Employee Member of PLB 6774, dated February 17, 2005, received in this office on February 23, 2005. He enclosed with his letter was two (2) copies Award No. 8 in regards to the above referenced claim. I am enclosing two (2) copies of this Award with this letter for your use and reference.

You will note that this is a dismissal Award.

Would you please make the Claimants aware of this Award at your earliest convenience. It would also be good to furnish the Claimants with a copy of this Award. As I have noted, this is a dismissal Award, therefore, this is the final step of the handling of this claim as provided by the current Agreement under the provisions of the Railway Labor Act. Therefore, we are now closing our file on this claim.

Fraternally,

J. V. Waller
General Chairman - Carmen
Joint Protective Board No. 200
BRC Division TCU

JVW/lmw
Enclosures

Exhibit #3
4 of 7

February 24, 2005
PLB 6774 - Award No. 8

CC: Brother Alex Novakovic, GVP
Brother Jack Wright, AGC/GST (with copy of Award)
Brother David Fancher, SR (with copy of Award)
Brother Richard Gerrow, LC (with copy of Award)
Brother Clarence Miller, former LC (with copy of Award)
Brother T. Dolan, Claimant (with copy of Award)

Exhibit #3

547

File No. 8405-BRC-1188
Claimants: Carmen F. Meddaugh, et al

SUBJECT: Claimants denied protective conditions of Side Letter No. 2 of January 1996 Agreement.

Initial claim presented in a letter dated September 23, 2003

Claim denied by Carrier in their letter of December 1, 2003.

February 19, 2004 responded to Carrier's letter of denial and requested that claim now be listed for discussion in conference.

July 19, 2004 agreed to list this claim with PLB 6774 which will convene in Chicago, IL on August 17, 2004.

July 27, 2004 filed submission with Brother Novakovic

August 17, 2004 claim heard by PLB 6774 as Case 10.

February 23, 2005 received denial Award No. 8.

February 24, 2005 furnished Local Chairman with copy of Award.

FILE CLOSED
FEBRUARY 24, 2005

Exhibit #3
6 of 7

CN NORTH AMERICA

Grand Trunk Western Railroad Incorporated

Duluth, Winnipeg & Pacific Railway Company

LT J.U. WALLER HAS THIS SIDE LETTER IN SUPPORT OF THESE CARMEN AND THE EXTRA BOARD AT PLB 6774 CASE NO. 10

January 10, 1996
File: 8000-667

Letter No. 2

LT AND MS CORTEZ RESEARCHED TIM DOLAN'S CLAIM TO THE EXTRA BRD. DOLAN CHOSE OPTION (b) AND WAS LAID OFF PERMANENTLY BY P.D.S., A COMPANY WHO LEASED THE FORMER PORT HURON CAR SHOP CLOSED MARCH 7, 2001

Mr. L. G. Thornton, General Chairman
Brotherhood Railway Carmen, Div.
Transportation Communications Union
1348 Colorado Avenue
Marysville, Michigan 48040

Dear Sir:

This will confirm the commitment by the Grand Trunk Western (GTW) that the January 10, 1996 agreement between the GTW and TCU Carmen will not be used to deny employees with a seniority date on or before January 10, 1996 who become furloughed hereunder the opportunity to participate in labor protective agreements, negotiated between the GTW and TCU Carmen, in the event all or part of the Grand Trunk Western Railroad Inc. is sold or leased and standard labor protective arrangements imposed in rail mergers (NYD) at that time, are not imposed by any federal board or agency.

To further clarify this commitment it is agreed that if portions of the current GTW are sold or leased with or without federally imposed protective conditions, the obligations under the September 11, 1979 Agreement, as amended, and the September 23, 1981/Merger Protection Agreement, as amended, will continue to apply to all TCU Carmen employees.

ATTACHMENT # 5

The Canadian National Railway (CNR) and the Grand Trunk Corporation (GTC) who are not signatories to the labor agreement between GTW and TCU Carmen also agree that, if all of the current GTW is sold or leased without the standard labor protective arrangements (NYD) in place at that time for rail mergers being imposed by any federal board or agency, they will guarantee that on the date of such a sale or lease all TCU Carmen employees with a seniority date on or before January 10, 1996 will be eligible for one of the following:

Thornton Retired From This 9-99. LG

(1) Employees receiving an option (a) extra board allowance pursuant to Article II 2 of the agreement identified above will continue to receive that voluntary furlough allowance through the maximum duration of five (5) years from the date of their furlough or to the date they are first eligible for an unreduced annuity under the Railroad Retirement Act, or until they become deceased;

(2) Employees receiving an option (b) allowance of 60% of the 1995 rate of pay pursuant to Article II 2 of that same agreement who do not accept a position with the acquiring company and who are within seven (7) years of eligibility for an unreduced annuity under the Railroad Retirement Act will have their allowance decreased to the (50%) level and will continue to be paid that (50%) allowance to the date they are first eligible for an unreduced annuity under the Railroad Retirement Act pursuant to Article II 2, or until they become deceased;

LG

LG Active Employees Includes Extra Board

NOTE: ENTITLED BUT DO NOT HAVE TO TAKE Severance pay

(3) Active employees including extra board will be entitled to receive a lump sum separation allowance as provided in the Washington Job Protection Agreement, including health and welfare benefits for eighteen (18) months, unless they accept employment with the acquiring company. Eighteen (18) months union dues will be deducted from this separation allowance.

CN VOLUNTARILY ADDED This To Side Letter

LG

cc: CTM and IC+GTW General Chairman

30108
EB

SERVICE DATE - MAY 25, 1999

This decision will be included in the bound volumes
of the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556[1]

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION,
AND GRAND TRUNK WESTERN RAILROAD INCORPORATED
— CONTROL —
ILLINOIS CENTRAL CORPORATION,
ILLINOIS CENTRAL RAILROAD COMPANY,
CHICAGO, CENTRAL AND PACIFIC RAILROAD COMPANY,
AND CEDAR RIVER RAILROAD COMPANY

Decision No. 37

Decided: May 21, 1999

The Board approves, with certain conditions, the acquisition, by Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated (collectively, CN), of control of Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central & Pacific Railroad Company, and Cedar River Railroad Company (collectively, IC).

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[1] This decision embraces: STB Finance Docket No. 33556 (Sub-No. 1), Canadian National Railway Company, Illinois Central Railroad Company, The Kansas City Southern Railway Company, and Gateway Western Railway Company — Terminal Trackage Rights — Union Pacific Railroad Company and Norfolk & Western Railway Company; STB Finance Docket No. 33556 (Sub-No. 2), Responsive Application — Ontario Michigan Rail Corporation; and STB Finance Docket No. 33556 (Sub-No. 3), Responsive Application — Canadian Pacific Railway Company and St. Lawrence & Hudson Railway Company Limited.

ATTACHMENT Exhibit # 6

Other parties requesting that we impose an oversight condition include UP and IAM. UP contends that a reasonable oversight period will be needed to enable the Board to address any competitive problems created by the Alliance; and IAM, the collective bargaining representative for the craft or class of machinists on GTW, IC, and CCP, contends that, if we determine that the Alliance does not amount to a three-way control transaction, then we should retain oversight jurisdiction to monitor the operation of the Alliance so that, if a transfer of control requiring Board approval does in fact result, New York Dock protection for affected employees will be imposed. If that agreement ultimately does result in control for which approval is authorized, then we will impose New York Dock conditions for the protection of employees.

If problems do arise after approval and consummation of the transaction, involving these or other matters, our oversight condition should provide a fully effective mechanism for quickly identifying and resolving them. We are retaining jurisdiction to impose additional conditions if, and to the extent, we determine that additional conditions are necessary to address unforeseen harms caused by the transaction.

LABOR MATTERS. Our public interest analysis includes consideration of the interests of carrier employees affected by the proposed transaction. 49 U.S.C. 11324(b)(4); Norfolk & Western v. ATDA, 499 U.S. 117, 120 (1991). Applicants have shown that the net impact of this transaction on rail labor should be positive, as the merger will result in a net increase in union jobs. Unions representing more than half of applicants' organized employees (UTU, BMWE, International Brotherhood of Electrical Workers, and Brotherhood of Railway Signalmen) have reached agreement and now support the application.[96] Applicants acknowledge that the transaction will have limited adverse consequences for employees for particular crafts and in certain areas. Applicants anticipate abolishment of 311 positions, and the transfer of 138 positions. They indicate that they should be able to achieve most of this reduction in positions through attrition over the 3-year implementation period. Offsetting these losses, the transaction will also result in the creation over the next 3 years of approximately 384 positions, mainly operating personnel to handle increased traffic flows. These basic projections are unchallenged.

Having weighed the impact upon carrier employees against the other public benefits that should result from the transaction, we conclude that the impacts on employees do not require us to deny approval of the transaction. This is particularly clear when our mitigation of these impacts with the labor protective conditions we are imposing is taken into account.

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[96] According to a recent CN press release, the applicants also have negotiated an implementing agreement with the Brotherhood of Railway Carmen Division of TCU, resulting in applicants' having now signed implementing agreements (in one case, a letter of commitment) with unions representing 67% of the organized work force of CN and IC in the United States.

The basic framework for mitigating the labor impacts of rail consolidations is embodied in the New York Dock conditions. They provide both substantive benefits for affected employees (up to 6 years of full wages, moving allowances, preferential hiring, and other benefits) and procedures (negotiation, or, if necessary, arbitration) for resolving disputes regarding implementation of particular transactions. New York Dock, 360 I.C.C. at 84-90. We may tailor employee protective conditions to the special circumstances of a particular case. This is done where unusual circumstances require more stringent protection than the level mandated in our usual conditions. As specifically indicated below, we will grant certain requests to modify or clarify our basic conditions.[97]

a. The implementing agreement process. A number of parties have raised questions about the implementing agreement process. Under New York Dock, the carriers and employees must arrive at an implementing agreement before any changes in operations affecting employees may occur. If timely agreement cannot be reached, these matters are subject to binding arbitration. As part of this process, under the law as interpreted by the Supreme Court, collective bargaining agreement (CBA) terms may be modified as necessary to carry out a transaction in the public interest. Norfolk & W. Ry. v. American Train Dispatchers Ass'n, 499 U.S. 117 (1991) (Dispatchers).

In approving a rail merger or consolidation such as this, we have never decided in advance precisely what CBA changes, if any, will be required to carry out the transaction, and we will not do so here.[98] As we recognized in Conrail Merger, and as DOT urges here, those details are best left to the process of negotiation and, if necessary, arbitration under the New York Dock procedures. We will resolve any labor implementing agreement issues only as a last resort, giving deference to the arbitrator. Specifically, our approval of this transaction does not constitute a finding that any override of a CBA is necessary to carry out the transaction; rather, such matters should be left to negotiation and arbitration.

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[97] BLE has made allegations about premature consummation. We note that all employees are protected against adverse consequences of any actions taken in anticipation of the merger by Article I, section 10 of New York Dock.

[98] Several unions have asked that we make a declaration that it would never be appropriate for an arbitrator to override an entire CBA, and impose another one. We caution the arbitrators that, under the law as limited recently by the Board, they are constrained to make only those CBA changes that are necessary to permit the carrying out of the transaction. CSX Corp. — Control — Chessie System and Seaboard Coast Line Industries (Arbitration Review), Finance Docket No. 28905 (Sub-No. 22) (STB served Sept. 25, 1998) (Carmen III). This decision limits any CBA changes to those made by arbitrators during the period 1940 - 1980.

We admonish the parties to bargain in good faith to embody implementing agreements in CBAs rather than having such agreements arbitrally imposed. Good faith bargaining has always been an integral component of the New York Dock process. Applicants conceded at oral argument that the arbitrator, and the Board, if necessary, could properly take notice of any abuse of process in their deliberations.

As noted previously, unions representing at least more than 50% of applicants' workforce have reached agreement with applicants and now support the transaction.[99] The increasing return to negotiated agreements is one of the most positive developments in the consolidations we have recently approved, and we intend to encourage the continuation of that trend.

Various unions claim that Article I, section 3 of New York Dock precludes modification of certain benefits they received as the result of agreements implementing prior mergers approved by the ICC. ATDD stresses that certain ATDD employees enjoy "lifetime protection" as the result of a merger approved by the ICC in 1979, and subsequent CBA modifications made in 1996.[100] But these issues are not yet ripe for us to decide here. First applicants and the unions need to negotiate an implementing agreement. Only if that process fails, and applicants claim that changes need to be made in these CBAs, will it be necessary for an arbitrator to rule on these issues in the first instance. And those arbitrators will be constrained in this process not to change any protected "rights, privileges, and benefits," and only to make those changes that are necessary to carry out this transaction as significantly limited by the Board in Carmen III. See, generally, Carmen III.[101]

The ICC stated in Railroad Consolidation Procedures, 363 I.C.C. at 793, that, unless unusual circumstances make more stringent protection necessary, it would provide only the protections mandated by section 11347 (now section 11326). Here, however, TCU and others have presented valid concerns that require us to clarify or modify the application of our conditions as they relate to employees whose work may be transferred to Canada as the result of this transaction.

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[99] To the extent that these unions and applicants have asked us to impose their agreements as conditions, we will do so. See UTU-10 and BMWE-6 (discussed in detail in Appendix D). See also IBEW-8, filed Apr. 22, 1999 (request by IBEW, made with the consent of applicants, for adoption of the two implementing agreements entered into by IBEW and applicants).

[100] It appears that the particular benefits that concern these unions are actually included in CBAs negotiated as part of the implementing process or thereafter.

[101] As noted, due to the end-to-end nature of the proposed combination, applicants themselves have acknowledged that implementation of the CN/IC control transaction will require at the most only modest adjustments to existing CBAs.

A basic part of the bargain embodied in the Washington Job Protection Agreement, upon which the New York Dock conditions are based, is that rail carriers are permitted to move employees from one work site to another in order to achieve the benefits of a merger transaction. Such displacements do result in hardships for employees whenever they are required to move their place of residence, and New York Dock thus compensates the employee for the cost of the move. Ordinarily, applicants are not required to make protective payments to these employees who are offered continued employment, but decline to take advantage of it.

That being said, we do not believe that it would be appropriate for us to require employees to move to Canada or else forfeit their New York Dock protections. Such a move could be impeded by Canadian immigration laws, and could create unusually harsh dislocation problems for the families of these employees. We will not construe our conditions to have this effect.[102] Cf. Independent Union of Flight Attendants v. Pan Am. World Airways, 923 F.2d 678 (9th Cir. 1991) (Railway Labor Act (RLA) does not apply extraterritorially); Great Northern Pac. — Merger — Great Northern Ry., 61 I.C.C.2d 919 (1990). Instead, where work is moved to Canada, employees cannot be required to follow their work to Canada or else be deemed to have forfeited their New York Dock benefits.

b. Protection for non-applicant employees. TCU has asked that we impose New York Dock conditions for the benefit of KCS employees under the theory that the transaction before us is really a three-carrier transaction involving KCS, IC, and CN. UTU GCA-386 has asked us to extend New York Dock to the employees of a non-applicant carrier, BNSF. UTU GCA-386 claims that BNSF employees will be harmed because applicants will divert traffic away from BNSF, and that there is an inadequate record on this issue because BNSF has withdrawn from the case.

The ICC, with the approval of the courts, consistently ruled that the employees of a non-applicant carrier, or a carrier not directly involved in a transaction governed by 49 U.S.C. 11323, are not entitled to labor protection under 49 U.S.C. 11326.[103] In essence, labor protection was intended to cushion the impact on employees of merger-related restructuring of the carriers for which

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[102] Although applicants noted at oral argument that New York Dock protections would not be forfeited if an employee could show, as a matter of fact, that he or she was precluded from moving to Canada by Canadian immigration law, we do not believe that employees should be required to make that showing.

[103] Crounse Corp. v. ICC, 781 F.2d 1176, 1192-93 (6th Cir. 1986), cert. denied, 479 U.S. 890 (1986); Missouri-Kansas-Texas R. Co. v. United States, 632 F.2d 392, 410-12 (5th Cir. 1980), cert. denied, 451 U.S. 1017 (1981); Lamoille Valley R. Co. v. ICC, 711 F.2d 295, 323-24 (D.C. Cir. 1983); Southern Pacific Transp. Co. v. ICC, 736 F.2d 708, 725 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985); and Railway Labor Executives' Ass'n v. ICC, 914 F.2d 276, 280-81 (D.C. Cir. 1990).

In sum, based on its thorough environmental review in the EA process and consideration of the public comments, SEA has recommended, and we are imposing, 15 environmental conditions, the majority of which address safety. These conditions address such issues as hazardous materials transport, environmental justice, construction activity, and safety integration. There is also a condition providing that we may review the continuing applicability of our final environmental mitigation where warranted.

Our final environmental conditions are attached at Appendix E. We will continue appropriate monitoring of these environmental conditions under our general oversight for this transaction.

FINDINGS

In STB Finance Docket No. 33556, we find: (a) that the acquisition by CN of control of IC, and the integration of the rail operations of CN and IC, through the proposed transaction, as conditioned herein, is within the scope of 49 U.S.C. 11323 and is consistent with the public interest; (b) that the proposed transaction will not adversely affect the adequacy of transportation to the public; (c) that no other railroad in the area involved in the proposed transaction has requested inclusion in the transaction, and that failure to include other railroads will not adversely affect the public interest; (d) that the proposed transaction will not result in any guarantee or assumption of payment of dividends or any increase in fixed charges except such as are consistent with the public interest; (e) that the interests of employees affected by the proposed transaction do not make such transaction inconsistent with the public interest, and any adverse effect will be adequately addressed by the conditions imposed herein; (f) that the proposed transaction, as conditioned herein, will not significantly reduce competition in any region or in the national rail system; and (g) that the terms of the proposed transaction are just, fair and reasonable to the stockholders of CNR and to the stockholders of IC Corp. We further find that the conditions imposed in STB Finance Docket No. 33556, including but not limited to the oversight condition, are consistent with the public interest. We further find that any rail employees of applicants or their rail carrier affiliates affected by the transaction authorized in STB Finance Docket No. 33556 should be protected by the New York Dock labor protective conditions, as augmented, unless different conditions are provided for in a labor agreement entered into before the carriers make changes affecting employees in connection with the transaction authorized in STB Finance Docket No. 33556, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In STB Finance Docket No. 33556 (Sub-No. 1), we find that requiring UP to permit the use by GWWR of unlimited terminal trackage rights would not be in the public interest.

5. Applicants must comply with all of the conditions imposed in this decision, whether or not such conditions are specifically referenced in these ordering paragraphs.

6. Applicants must adhere to all of the representations they made on the record during the course of this proceeding, whether or not such representations are specifically referenced in this decision.

7. With respect to Geismar, LA, applicants must modify the CN/KCS Access Agreement to grant KCS access to Rubicon, Uniroyal, and Vulcan under the same terms and conditions that will govern KCS's access to BASF, Borden, and Shell.

8. Approval of the application in STB Finance Docket No. 33556 is subject to the New York Dock labor protective conditions. Those conditions will be augmented so that employees who choose not to follow their work to Canada will not lose their otherwise applicable New York Dock protections.

9. Applicants must adhere to the commitments they made to UTU.

10. Applicants must adhere to the terms of the CN/IC-BMWE implementing agreement. Applicants must also adhere to the terms of the two implementing agreements entered into with IBEW.

11. Approval of the application in STB Finance Docket No. 33556 is subject to the environmental mitigation conditions set forth in Appendix E.

12. In STB Finance Docket No. 33556 (Sub-No. 1), the KCS trackage rights application is denied.

13. In STB Finance Docket No. 33556 (Sub-No. 2), the responsive application filed by OMR is denied.

14. In STB Finance Docket No. 33556 (Sub-No. 3), the responsive application filed by CPR and St.L&H is denied.

15. All conditions that were requested by any party in the STB Finance Docket No. 33556 proceeding and/or in the three embraced proceedings but that have not been specifically approved in this decision are denied.

16. As respects certain procedural matters not previously addressed: (a) the CPR-17 petition to initiate an investigation is denied; (b) the KCS-13 motion to strike is denied; (c) the BMWE-6 joint motion for adoption of the CN/IC-BMWE implementing agreement as a condition of

Supreme Court, have held that under the law CBAs may be modified as necessary to implement a Board-approved transaction, and that the period during which they may be changed can extend for a number of years.[123] The Board is bound by court decisions interpreting our statute until the law is changed by Congress,[124] and when I was named ICC Chairman in 1995, the agency was subject to the constraints imposed by the case law on these issues. However, I note that in none of the merger proceedings decided under my watch prior to the transaction before us here — Burlington Northern-Santa Fe, Union Pacific-Southern Pacific, and CSX-Norfolk Southern-Conrail — has the Board or the ICC affirmatively found it necessary to override a CBA.

Nevertheless, labor interests have expressed concern that cases that were decided before I joined the ICC, along with the ICC's active involvement in the arbitration process, had the effect of skewing negotiations in favor of management. I understand that concern, and I respect and believe in the collective bargaining process. Even given existing law and precedent, I have worked diligently to bring about a level playing field to ensure that management as well as labor have every incentive to engage in good faith negotiations to resolve disputes over the implementation of Board-approved transactions. Under my leadership, in the so-called "Carmen III" case the Board limited to the maximum extent possible under current law the power to override or modify a CBA, returning to the modification authority exercised by arbitrators during the period of 1940-1980 pursuant to the Washington Job Protection Agreement of 1936 negotiated by labor and management. Additionally, the Board has moved away from interjecting itself into the arbitral process and, rather, has emphasized its strong preference for voluntary private-sector resolution of issues such as labor matters. And when more aggressive action has seemed necessary, the Chairman order authority has been used to issue injunctions in order to facilitate and expand opportunities for bargaining.

These efforts to encourage negotiation rather than arbitration have produced significant results. The applicants in the CSX-Norfolk Southern-Conrail transaction have concluded all implementing agreements for that transaction through private negotiation with the many involved unions without the substantive involvement of the Board.[125] As in CSX-Norfolk Southern-

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[123] The seminal ICC decision regarding modification of CBAs — the so-called "DRGW" decision — was made in 1983 and adopted by the Supreme Court, in the so-called "Dispatchers" case, in 1991. The case establishing the duration of the change period—the CSX Sub-23 decision—was decided by the ICC in 1992, and affirmed by the D.C. Circuit Court of Appeals in 1994.

[124] In my letter to Senators McCain and Hutchison dated December 21, 1998, reporting on the Board's rail access and competition proceeding, I suggested that Congress may wish to change the law governing the override of CBAs.

[125] Indeed, in resolving the last outstanding labor implementation dispute in the Conrail

(continued...)

Conrail. I expect the parties in this case that have not yet reached agreement to work diligently to resolve their issues privately.

As I noted earlier, this positive direction for labor-management relations continues in the CN-IC case. A number of labor parties to this case already have negotiated agreements. The Brotherhood of Maintenance of Way Employes, for the first time, is supporting a major merger and has entered into an agreement with the applicants, which the union believes should serve as a model for how mergers should be implemented. The United Transportation Union, the largest rail union, has again engaged in productive bargaining, and has reached a privately negotiated agreement for the benefit of its membership in yet another merger proceeding. Other unions have also reached agreement, as a result of which, as noted, unions representing a majority of the applicants' work forces support the merger. I applaud the commitment to good faith and the leadership of those involved in these negotiations, and I am certain that the applicants will, in good faith, seek to use private negotiations to arrive at all implementing agreements necessary to implement their transaction.

Certain specific labor concerns have been voiced in this proceeding, which our decision addresses in a variety of ways. First, with respect to moving jobs to Canada, our decision augments New York Dock in this proceeding to provide that workers who do not move to Canada can still retain the benefits of those protective conditions. Second, our decision reiterates the policy that all bargaining in the implementing process is to be conducted in good faith. Third, our decision makes it clear, in line with the Board's recent decision in the CSX-Norfolk Southern-Conrail proceeding, that a decision to approve this merger does not in any way indicate that any particular collective bargaining agreement should be overridden. In this regard, our decision also highlights applicants' recognition of the respect due to prior labor agreements. Fourth, our decision holds applicants to their representations that they will provide advance notice and will consult with the Federal Railroad Administration regarding the safety implications of transferring dispatching functions to Canada, should they decide to do that in the future. Furthermore, our decision, in declining to approve the Alliance Agreement, provides that any changes in CBAs to implement the Alliance will remain subject to the Railway Labor Act process. And finally, our decision imposes oversight to address other concerns of labor about the Alliance Agreement and ongoing safety matters.

Beyond labor matters, I also applaud the applicants and various other parties for working to reach privately negotiated settlement agreements. The applicants reached agreements with the National Industrial Transportation League, several railroads, and various other interested parties, and these negotiated settlements are reflected in the fact that this merger is widely supported by over

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[125](...continued)
acquisition proceeding, the International Association of Machinists and Aerospace Workers credited a Chairman's stay as enabling the parties to reach an agreement.

I support the concept of privately-negotiated agreements. Parties to these agreements have a vested interest in maximizing efficiencies and enhancing their financial viability. However, the statute does not contemplate blind reliance on projections and claims, nor can the Board ignore the concerns of other participants in this proceeding. In an increasingly concentrated rail industry, it is important for the Board to carefully consider, and promptly resolve, the petitions of affected parties other than the transaction's principals, including small or infrequent rail shippers, communities, carrier employees, and shortlines and regional railroads. Each of these parties also has an important stake in the successful implementation of this transaction.

I am persuaded that the Alliance Agreement between CN, IC, and Kansas City Southern is an example of a privately-negotiated cooperative effort between parties seeking to enhance competition. The Alliance Agreement in this case does not result in the common control of CN, IC, and KCS — all decisions of the Alliance are consensual, and each participant retains the managerial prerogative to veto any action by the Alliance. Thus, there is no need to require KCS to be a co-applicant in this proceeding. I have also carefully considered the argument raised by the United States Department of Transportation (DOT) that the Alliance Agreement may reduce competition between KCS and applicants for traffic in the New Orleans-Baton Rouge, LA, corridor. It is appropriate that we condition this decision to carefully monitor this situation to protect against any harmful diminution of competition.

The Board is also granting haulage rights to KCS over IC's line to serve three additional shippers at Geismar, LA. Because of this merger and its related Access Agreement, it is unlikely that any Geismar construction project will occur even though KCS has previously requested our regulatory approval for such construction. This loss of the build-in/build-out option by the three shippers could have a significant adverse effect on potential competition in the area. Accordingly, the Board's grant of haulage rights to KCS is in the public interest because the Geismar condition is intended to preserve these shippers' pre-merger competitive position.

This transaction should result in no track redundancies, abandonments, or reroutings because the CN and IC systems will be joined at a single point, Chicago. Therefore, I expect that there will be only minimal or no disruptions to employees,[126] shippers, and communities, and minimal risk of service and safety problems during implementation of the merger. The Board's Section of Environmental Analysis (SEA) has prepared a thorough Environmental Assessment in which SEA evaluated the potential significant impacts of increased rail traffic and has recommended

[126] Applicants have stated that a limited number of employees in particular crafts and geographic areas may be adversely affected by the transaction. While applicants expect that the transaction will create 384 new positions over the 3-year implementation period, they also anticipate the abolishment of 311 positions and the transfer of 138 positions. Applicants state, however, that most of these job losses should be achieved through attrition.

Thomas N. Rinaldo, Esq.

ATTORNEY / ARBITRATOR
LABOR & EMPLOYMENT DISPUTE RESOLUTION

November 24, 2004

Mr. Jack Gibbons
Director/Labor Relations
Canadian National
17641 South Ashland Avenue
Homewood, Il 60430-1339

Mr. T. K. Sorge
2332 N. Erie
Toledo, OH 43609-3245

Mr. T. W. Black
2055 Middleton Pike
Luckey, OH 43443

Re: New York Dock: T. W. Black, et al and CN

Gentlemen:

After reviewing the correspondence from Mr. Gibbons dated November 11, 2004, the correspondence of Mr. Black and Mr. Sorge of November 20, 2004, it is my determination:

1. The hearing shall be held at the National RR Adjustment Board offices in Chicago on Thursday March 3, 2005 at 10am. The Carrier shall make the appropriate arrangements.

2. As I understand it, the Brotherhood of Railway Carmen is not participating in these proceedings. That being the case then the Claimants have the right to select anyone to represent them in these proceedings and as I understand it they have selected Mr. Thornton who I will accept as the Claimants representative.

3. Briefs are to be exchanged with the parties and submitted to me postmarked February 1, 2005.

Very truly yours,

Thomas N. Rinaldo

P.O. Box 1334
WILLIAMSVILLE, NY
14231-1334

TEL (716) 688-1786
FAX (716) 568-0690

Exhibit
Attachment #9

Labor Relations

17641 South Ashland Avenue
Homewood, Illinois 60430

www.cn.ca

December 3, 2004

Mr. Thomas N. Rinaldo
Attorney/Arbitrator
P.O. Box 1334
Williamsville, NY 14231-1334

Dear Mr. Rinaldo:

This letter is in response to your correspondence dated November 24, 2004. The Company will adhere to your acceptance of Mr. Larry Thornton as the representative for the employees in this matter.

However, the Company would like it clearly stated for the record that it is the Brotherhood of Railway Carmen's position that the employees in this matter have no claim to progress. In fact, the employees' duly elected representative, J. V. Waller, has previously advised the National Mediation Board of this in a letter dated June 28, 2004.

Sincerely,

J. S. Gibbins
Director – Labor Relations

cc: Mr. J. V. Waller
Mr. T. K. Sorge
Mr. T. W. Black
Mr. L. G. Thornton

ATTACHMENT # 8
EXHIBIT A-10

Mr. Thomas N. Rinaldo
Attorney/Arbitrator
PO Box 1334
Williamsville, NY 14231-1334

December 9, 2004

Mr. Rinaldo, Sir:

This in response to Mr. Jack Gibbins letter to you dated December 3, 2004 . It is well that the Carrier is adhering to your acknowledgment of me as the employees representative under the ICC New York Dock conditions and rights of the employees in this matter.

However , the employees would like it clearly stated and clearly understood for the record , that the position taken by the Brotherhood Railway Carmen (as stated By Mr. Gibbins) that the employees do not have a claim to progress is mute , and of none effect in this matter. The organization is a major player in the "problem" not the solution . It is clear that, Mr. Gibbins is trying to personally "alert" you to the fact J.V. Waller had sent a letter to the National Mediation Board stating the "organizations position" , June 28, 2004. These carmen employees , Tim Black and Tom Sorge in fact have had no representation from that organization since November 1, 1996 when their Joint Board #60 was dissolved illegally and their General Chairman kicked out of the union .

This case to be heard March 3, 2005 along with other events will prove and show exactly why those events happened in 1996 and how this ***present problem evolved*** according to plan .
Sincerely

Larry G Thornton

Larry G. Thornton
3156 Nokomis trl.
Clyde, Mi. 48049 (810-984-8644

CC -- Mr. Jack Gibbins ,Timothy Black, Thomas Sorge

Attch. Exhibit # 9
1 of 1

NEW YORK DOCK ARBITRATION PANEL

T.W. Black, et al.	:	
	:	
and	:	Thomas N. Rinaldo,
	:	Neutral
Canadian National/Grand Trunk Western Railroad	:	
	:	

DECLARATION OF MARILYN KOVACS

(1) My name is Marilyn Kovacs. I have been employed by the Detroit, Toledo & Ironton Railroad ("DT&I") and Grand Trunk Western Railroad ("GTW") from 1964 to the present. I have worked in the DT&I and GTW Labor Relations Departments from 1966 until the present, and have been employed in various labor relations positions, most recently as Manager, Labor Relations. In that capacity I have been responsible for the day-to-day interpretation and enforcement of GTW's collective bargaining agreements with the labor organizations representing its non-operating crafts, including the Brotherhood of Railway Carmen ("BRC"). I personally participated in the negotiation of several collective bargaining agreements with BRC, including various implementing agreements associated with GTW's acquisition of DT&I and the Detroit & Toledo Shore Line Railroad ("DTSL"). As a result of these activities, I am very familiar with the interpretation and application of those agreements.

(2) In September 1979, GTW entered into an implementing agreement with a number of labor organizations representing employees in various crafts or classes on GTW, DT&I and DTSL to provide the required labor protective benefits in connection with GTW's acquisition of DT&I and DTSL. A copy of that Agreement is included in the Carrier's Appendix of Exhibits as Exhibit A. BRC was one of the signatories to that Agreement. In addition to the

Attachment #10

standard New York Dock protective benefits, the September 1979 Implementing Agreement provided certain enhanced benefits, including automatic certification of active employees on GTW, DT&I or DTSL as adversely affected for purposes of receiving protective benefits, and lifetime protection for employees designated as "protected employees" under that Agreement. However, the September 1979 Implementing Agreement also provided that it would not become effective and the enhanced benefits provided under that Agreement would not apply to employees in a particular craft or class until the labor organization representing that craft or class reached a single working agreement on GTW, DTI and DTSL.

(3) In September 1981, BRC and GTW negotiated a single working agreement governing all BRC-represented employees on the combined GTW system. Relevant parts of that Agreement are included in the Carrier's Appendix of Exhibits as Exhibit B. The September 1981 Agreement consisted of several separate agreements identified as Agreements "B" through "H," which together were deemed to "constitute coming to agreement on a single Working Agreement which will be applicable to all Carmen employees of the G.T.W. and D.T.&I. Railroads represented by the B.R.C." Agreement F of the 1981 Agreement clarified that "protected employees" entitled to automatic certification under the 1979 Implementing Agreement would be those Carmen who had an employment relationship with any of the constituent railroads on June 24, 1980 (the date of the GTW acquisition) and a Carman seniority date prior to June 25, 1980, and that such automatic certification would become effective on the September 23, 1981, the effective date of the 1981 Agreement.

(4) Agreement H of the 1981 Agreement clarified the Carrier's right to transfer work and/or employees throughout the GTW system, and established procedures for such transfers. Section II of Agreement H clarified that the Carrier had the right to transfer

protected employees, who would otherwise be furloughed, to fill vacancies anywhere on the combined GTW system. In connection with any such transfer, Agreement H provided the employee to be transferred with four options: (1) transfer to the new seniority point with relocation benefits if the employee actually changed his residence; (2) transfer to another available job in his craft at another point, with relocation benefits if the employee actually changed his residence; (3) take a separation allowance in accordance with the Washington Job Protection Agreement; or (4) continue on furloughed status at their original location with no protective benefits.

(5) GTW has consistently utilized the procedures under Agreement H of the 1981 Agreement to force transfer employees in the Carman craft to new seniority points. In every instance, employees who did not accept a transfer, exercise seniority to another location or take a separation allowance have been deemed to have elected a furlough without protection.

(6) It is my understanding that the Claimants in this case, T.W. Black and T.K. Sorge, have alleged that the Carrier's right to force transfer Carman employees under Agreement H of the September 1981 Agreement was abrogated by the provisions of another agreement between GTW and BRC dated March 18, 1983. A copy of the March 18, 1983 Agreement is included in the Carrier's Appendix of Exhibits as Exhibit C. Claimants' argument is simply wrong. By its own terms, the March 18, 1983 Agreement modified only the manner in which furloughed employees who were receiving displacement or dismissal allowances would be paid such allowances. In particular, the March 18, 1983 Agreement requires the Carrier to establish a guaranteed extra board, which guarantees that furloughed protected employees will be paid for four shifts of seven hours each week. However, nothing in the March 18, 1983 Agreement places any restriction on the Carrier's right to force transfer protected employees, nor

does that Agreement it limit in any way an employee's obligation to accept a forced transfer as a condition of maintaining eligibility for protection payments. Under Agreement H of the September 1981 Agreement, a protected employee subject to furlough who elects not to accept a transfer to fill a vacancy is not eligible for a displacement or a dismissal allowance, and so the terms of the March 18, 1983 Agreement do not apply to that employee.

(7) It is also my understanding that Claimants Black and Sorge have taken the position that Section 7 of the September 1979 Implementing Agreement prohibits the Carrier from transferring them to fill a vacancy elsewhere on the GTW system if it would require a change in residence. Again, Claimants' interpretation of the 1979 Implementing Agreement is inconsistent with the manner in which that Agreement and the September 1981 Agreement have been applied by the Carrier and BRC. Section 7 of the 1979 Agreement has never been interpreted or applied as limiting the Carrier's ability to force transfer Carmen employees pursuant to Agreement H of the September 1981 Agreement. In that regard, the provisions of the 1979 Agreement were not effective until GTW and BRC negotiated the September 1981 Agreement, and Agreement H of the September 1981 Agreement explicitly gave the Carrier the right to force transfer protected employees.

I have read the foregoing Declaration, and I swear under penalty of perjury under the laws of the United States that it is true and correct to the best of my knowledge and information.

Marilyn Kovacs

MARILYN KOVACS

January 19, 2005

CN

www.cn.ca

United States Region

Karen A. McCarthy
Human Resources Manager

17641 S. Ashland Avenue
Homewood, Illinois 60430-1345
708-332-3569 (Telephone number)
708-332-6737 (Facsimile number)

FEB 22 2005
BY: J.V.W.

Copies To: Crawley
Hicks

February 16, 2005

Mr. J. V. Waller
General Chairman – Carmen
Joint Protective Board No. 200
BRC Division TCU
127 Baron Circle
Corryton, Tennessee 37721

Re: Claimants: Carmen R. L. Hoag, et al.
Location: Battle Creek, MI
File No: GTW 126-104-29

Dear Mr. Waller:

This will confirm our conference of February 11, 2005, in which you appealed the claim on behalf of Carmen R. L. Hoag, R. E. Parson, E.R. Bell, R. A. Pupel, D. A. Hicks, A. J. Worm, R. L. Burk, C. E. Linsley, F. H. Falk, T.J. Manchester, D. C. Matthews, L. G. Foster and H. C. Mellen (Claimants). Organization alleges that Carrier violated the provisions of Agreement "F" dated September 23, 1981, and the Agreement effective February 28, 1983, dated March 18, 1983 that amends and defines Agreement "F" when an Extra Board was not created when Claimants' positions were abolished at Battle Creek.

Article IV, subparagraph (a) of the Agreement signed April 9, 2001 with the GTW Carmen provided that all employees in active service as of April 9, 2001 would be retained in service as Carmen unless or until retired, discharged for cause, or otherwise removed by natural attrition. Under Subparagraph (b), employees required to relocate anywhere on the GTW or IC to retain the benefits of subparagraph (a) would be entitled to the relocation benefits contained in the September 25, 1964 National Agreement. Carrier was not obligated to create an Extra Board as the employees were notified when their positions were abolished that they had one of four options:

1. Exercise seniority to displace a T-carman;
2. Take a separation to be computed in accordance with the Washington Job Protection Agreement
3. Accept an open position at another location; or
4. Take furlough without protection.

As protected employees, these Claimants either exercised seniority to other full-time positions or elected to take a lump sum separation payment. Therefore, even if the creation of an extra board was required, which it is not, there aren't any available employees to call. For the record, our declination is reaffirmed.

Very truly yours,

Karen A. McCarthy

Karen A. McCarthy
Human Resources Manager

ATTACHMENT #11

cc: Mr. Paul R. Werner – via email

32239
EB

SERVICE DATE - NOVEMBER 7, 2001

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556 (Sub-No. 4)[1]

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND GRAND TRUNK WESTERN RAILROAD INCORPORATED
— CONTROL —
ILLINOIS CENTRAL CORPORATION,
ILLINOIS CENTRAL RAILROAD COMPANY,
CHICAGO, CENTRAL AND PACIFIC RAILROAD COMPANY,
AND CEDAR RIVER RAILROAD COMPANY

[GENERAL OVERSIGHT]

Decision No. 3

Decided: November 5, 2001

This decision addresses the report and comment filed in the second annual round of the CN/IC general oversight proceeding. Our review of the record indicates that, during the second year of oversight, there continue to be no competitive or other problems resulting from the merger. In view of our findings, we are seeking comments on whether this general oversight proceeding should be discontinued.

BACKGROUND

In 1999, in CN/IC Dec. No. 37, we approved, subject to various conditions: (1) the acquisition, by Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated (collectively CN), of control of Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central & Pacific Railroad Company, and Cedar River Railroad Company (collectively IC); and (2) the integration of the rail operations of CN and IC.

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[1] This decision embraces STB Finance Docket No. 33556, Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated — Control — Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company (CN/IC), for the purpose of addressing the pleading filed on June 7, 2001, by Larry G. Thornton entitled "Brief on Appeal Concerning STB Finance Docket No. 33556." See CN/IC, Decision No. 37 (STB served May 25, 1999) (CN/IC Dec. No. 37).

Attachment #12

In our decision, we established general oversight for a period of up to 5 years so that we might assess the competitiveness of service provided by CN/IC and KCS under the Alliance Agreement[2] and the effectiveness of the various conditions we imposed. We reserved jurisdiction to implement the oversight condition and, if necessary, to impose additional conditions and/or to take other action to address matters respecting the CN/IC control transaction. See CN/IC Dec. No. 37, slip op. at 8 (item 8), 39-40, 56 (ordering paragraph 1). Accordingly, in a decision served and published in the Federal Register on March 9, 2000,[3] we instituted this proceeding to implement the general oversight condition. We required CN to file a CN/IC progress report and invited interested persons to comment on both the status of the transaction and the effects of the various conditions we imposed.

In response to CN's first progress report, comments were filed by eight parties, including the United States Department of Transportation (DOT). In our first oversight decision, we found that the integration of CN and IC had been successful to date and had not resulted in service failures or produced any evidence or allegation of anticompetitive behavior by CN/IC or by the parties to the CN/IC/KCS Alliance Agreement. See CN/IC Oversight, Decision No. 2 (STB served Nov. 29, 2000), slip op. at 5. Although we did not find significant problems with the CN/IC transaction, we continued the general oversight proceeding by requiring CN to file a second annual progress report and by giving interested parties the opportunity to file comments. Id. at 6-7.

On June 7, 2001, Larry G. Thornton filed an appeal to CN/IC Dec No. 37 entitled "Brief on Appeal Concerning STB Finance Docket No. 33556" and, on June 18 and July 13, 2001, he filed amendments to his prior filings.[4] CN filed its second progress report (CN-4) on July 2,

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[2] In CN/IC Dec. No. 37, The Kansas City Southern Railway Company and Gateway Western Railway Company, and all other wholly owned subsidiaries of Kansas City Southern Industries, Inc., were referred to collectively as KCS. As explained in that decision, CN, IC, and KCS entered into a settlement agreement on April 15, 1998, that was referred to as the Alliance Agreement or the CN/IC/KCS Alliance Agreement, and CN and KCS entered into another settlement agreement on April 15, 1998, referred to as the Access Agreement, portions of which amount to an addendum to the Alliance Agreement. See CN/IC Dec. No. 37, slip. op. at 14-18.

[3] See Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated — Control — Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company (General Oversight), STB Finance Docket No. 33556 (Sub-No. 4), Decision No. 1 (STB served and published on March 9, 2000 (65 FR 12623-24)) (CN/IC Oversight).

[4] We note that our rules require appeals to be filed 20 days after the service date of the

(continued...)

2001. Only one party, DOT, commented on CN's report. In its comment (DOT-3 filed August 17, 2001), DOT indicates that CN and the Federal Railroad Administration (FRA) continue to work together to ensure a safe and smooth implementation of the CN/IC merger and that, while it is still too early to reach definitive conclusions regarding the transaction, the record thus far indicates that CN and IC have managed their combination successfully. On September 4, 2001, CN filed its reply (CN-5) and DOT filed its reply (DOT-4).[5]

DISCUSSION AND CONCLUSIONS

Overview. CN's progress report submitted in the second oversight year demonstrates that the CN/IC transaction has been successful to date and that the carrier has added new transportation services and improved transit times throughout its system. CN also demonstrates that safety has not been compromised and that labor relations with employees of CN and IC remain on good terms. In the only comment to CN's progress report, DOT states that the record so far indicates that CN has successfully managed its combination with IC.

Moreover, there is no evidence of anticompetitive conduct by the CN/IC system or by the parties to the CN/IC/KCS Alliance Agreement. CN indicates that Alliance Agreement traffic continues to grow and that competition between CN and KCS is vigorous and increasing in the areas where the Alliance Agreement is in effect, particularly in the Baton Rouge-Geismar-New Orleans corridor. CN states that, by selling its interest in the Detroit River Tunnel and transferring operational control to Canadian Pacific Railway Company (CP), it has resolved outstanding concerns regarding the tunnel. According to CN, the Chicago gateway remains open

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[4](...continued)
Board's action; however, Mr. Thornton's appeal was filed more than a year after we issued our decision approving the CN/IC transaction. Nevertheless, we have considered Mr. Thornton's appeal. Mr. Thornton, a former general chairman of the Brotherhood Railway Carmen Division/ Transportation Communications International Union (BRC/TCIU) and an "individual citizen," complains that certain officials of his labor union "colluded and conspired" with Grand Trunk Western Railroad and CN to deprive local members of BRC/TCIU of seniority rights and other New York Dock labor protective benefits. Mr. Thornton also states that he has filed a court action against TCIU and that arbitration is not appropriate because his complaint is against the local union. In our view, Mr. Thornton's complaint is an intra-union matter best resolved internally by the members of his particular union or, if that fails, in court. We therefore are denying Mr. Thornton's appeal.

[5] In its reply (DOT-4), DOT notes that there have been no comments or complaints of service problems, anticompetitive behavior, or unfulfilled representations. DOT states that, although there is no evidence to support any change in the conditions originally imposed, the Board should continue to oversee the long-term implications of the CN/IC transaction.

for North Dakota grain shippers, there have been no complaints regarding lumber pricing practices, and it continues to comply with all environmental conditions imposed by the Board in the CN/IC proceeding. The record on the whole does not show any competitive or other problems stemming from the combination of IC into CN's system.

Comments on Continuation of General Oversight. Our oversight during the first and second years has revealed no significant problems following implementation of the CN/IC merger. The only comment filed in the second year (DOT-3) was positive. While DOT in its reply (DOT-4) urges us to continue to oversee the long-term implications of the merger, we have authority independent of the formal oversight process to enforce or revise merger conditions as warranted upon request or on our own initiative. Therefore, in view of the overall affirmative record in this proceeding, we have preliminarily concluded that our general oversight of the CN/IC transaction should cease. There does not appear to be an evidentiary reason for continuing formal oversight for the full 5-year term or, for that matter, the next year (the third year). Before making a final determination on this issue, however, we will seek comments on whether this general oversight proceeding should be discontinued. Any comments will be fully considered in reaching our decision.

5 yr. oversight Reduced To 2 year. ???

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments of interested parties on whether this general oversight proceeding should continue are due November 27, 2001. Replies will be due December 7, 2001.

2. The appeal of Larry G. Thornton in STB Finance Docket No. 33556 is denied.

3. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

Timothy W. Black
2055 Middleton Pike
Luckey, OH 43443

Phone: (419) 833-8281

April 16, 2004

Jack Gibbons
Director, Labor Relations
Grand Trunk & Western Railroad
Troy, MI 48007-5025

Dear Mr. Gibbons:

I write this to you expressing my understanding that my position as Carman at Lang Yard, Toledo, OH has been abolished. I am aware that since there is more than one "protection" agreement in place on the GTWRR, it is my obligation to inform the carrier (GTWRR) which Protective agreement I wish to be placed under while being in a displaced position at Lang Yard, Toledo, OH.

It is my "choice" which comes to me under the September 4, 1979 Merger agreement protections as amended on September 23, 1981, and as amended March 18, 1983 (Extra Board Agreement), to be placed in my seniority position upon an established "extra board" located at Lang Yard, Toledo, OH.

It is suggested that you read the STB Finance Docket 33556 concerning the merger of the GTWRR and ICRR especially the "order's". Notice the following in the findings and Order: Note 8. Approval of the application in STB F.D. 3356 is "subject" to New York Dock protective conditions.

Chairman Morgan comments:
Page 60. "In this regard, our decision also highlights the applicant's recognition of the "respect " due to prior labor agreements."

Vice Chairman Clyburn comments:
Page 62. "Therefore, I expect that there will be only minimal or "no" disruption's to employee's."

Commissioner Burke comments:
Page 64. "From my point of view, a finding of the public interest must include a determination of fair working conditions, wages, and "enhanced job security"."
Page 65. "The employee's will enjoy every form of protective benefit, both substantially and procedurally, they are entitled to including no diminution under New York Dock, and as augmented."

This clearly states that the minimum protections afforded the GTWRR Carmen are New York Dock. The fact that we are presently under the auspicious of New York Dock in Finance Docket ICC 28676 (DT&I-DTSL-GTW Merger agreement) the Carrier is required to immediately establish an extra board in Toledo, OH. I am ready to protect the time's required under these agreements.

Thank you for receiving this letter. I ask that an extra board be expeditiously established under the current September 23, 1981 agreement and the March 18, 1983 extra board agreement.

Sincerely,

Timothy W. Black

Cc: Richard A. Johnson, Pres. BRCA
James V. Waller, General Chairman JPB 200
Paul Warner, CMO GTWRR
Ms. Brown, USDOT OIG Investigator

Certified Return Mail 7099 3400 0016 9253 8406

ATTACHMENT #13

(21)

Timothy W. Black
2055 Middleton Pike
Luckey, OH 43443

Phone: (419) 833-8281

April 21, 2004

Jack Gibbons
Canadian National Railroad
Director, Labor Relations
2800 Livernois, Suite 300
Troy, MI 48007-5025

Certified Return Mail 7000 0600 0027 2447 5792

Dear Mr. Gibbons:

Kindly be advised that I, Timothy W. Black, am a Detroit & Toledo Shoreline employee as designated in the GTW-DTI-DTLS merger as relating to the Finance Docket 28250. According to the Protective Conditions of the merger, I am afforded the "New York Dock" as stated in ICC360 Report Interstate Commerce Commission Report Page 536. It is ordered. Further, the ICC360 Report, page 531, "Employee Protection" clearly states by the Administrative Law Judge that the record by petition be reopened. *"October 26, 1979, the Inconsistent applicant "GTW" and the RLEA (Rail Labor Executives Association) jointly filed a petition to reopen the record to receive the labor protective agreement and a motion requesting a finding that the agreements satisfy the requirements of 49 U.S.C. 11347. The petition will be granted."*

"The Administrative Law Judge also states that (whether joint or inconsistent applicants) bear the responsibility and this cost." Also, the Administrative Law Judge states "in the employee protections...." And a refinement in the term "change of residence" outlined in the Protective Agreement (September 23, 1979) granted by the Administrative Law Judge in ICC 360 Report Finance Docket 28250 ordered no. 1.

In addition, I also quality for the implementing agreement 1981 and 1983 which are implementing to the September 23, 1979 agreement aforementioned in the ICC 360 Report.

I have an employment relationship with Detroit and Toledo Shoreline through the GTW-DTI-DTSL merger. The January 16, 1985 agreement afforded me the right to come off furlough and work in Detroit (Ferndale Yard) in order to accrue my necessary 732 actual working days to become a certified Carman. As a result of a subsequent job opening at Toledo (Lang Yard), I returned to my home point as a certified DTSL adversely affected employee. I have never signed off my rights or relocated from the DTSL property.

According to the September 23, 1979 Protective Agreement Section 2(c), I am certified as an adversely affected DTSL employee. All other employees (i.e., those on authorized leave of absence or furlough) with an employment relationship with GTW, DT&I or DTSL on such date of acquisition shall become "protected employees" as of the date they become actively employed by their respective carrier employer.

Also in the September 23, 1979 Protective Agreement Section 6 and Section 7 are the refinement in "change of residence" as mentioned in the ICC 360 Report (Employee Protections). Section 6 states "The term "change of residence" shall mean a transfer of an employee's work location to a point located either (a) outside a radius of 30 miles of the employee's former work location and farther from his residence than was his former work location or (b) is located more than 30 normal highway route miles from his residence and also farther from his residence than was his former work location. Section 7 states "DTSL employees who are receiving dismissal allowance shall be obligated to accept a reasonably comparable position with the GTW or the DT&I which does not require a change in residence in order to maintain their protection hereunder." Please notice that Section 7 states **"does not require a change in residence in order to maintain their protection hereunder.**

Agreement "H" of the 1981 Implementing Agreement and the 1983 "Extra Board Agreement" apply to me as a DTSL protect "certified as adversely affected" employee. It is my choice as a result of the abolishment of my position at Lang Yard to be placed on an "extra board". In addition, I am not subject to move over 30 miles because of the language in agreement "H" V. 2 **"This Agreement is intended to clarify conditions, responsibilities and obligations of protected employees. Nothing contained in this Agreement shall be construed to eliminate or reduce an existing conditions, responsibilities or obligations pertaining to protected employees as set forth in any rule, agreement, including the September 4, 1979 Agreement and the "New York Dock Conditions", I.C.C., Finance Docket 28250."**

Jack Gibbons
Canadian National Railroad
Director, Labor Relations
2800 Livernois, Suite 300
Troy, MI 48007-5025

Certified Return Mail 7000 0600 0027 2447 5792

The 1981 Agreement "H" Language V. 2 clearly prevents the GTW from denying my protective rights if I elect to not accept a position in which I would have to relocate over 30 miles. The ICC 360 Report Finance Docket 28250 states "It is ordered: 1. The record is opened for the sole purpose of receiving the labor agreement filed October 26, 1979, between Grand Trunk Western Railroad Company and the representative of certain railway labor organizations."

In conclusion, I ask that the GTW establish an "extra board" to which I can be placed as guaranteed under the aforementioned agreements. This "extra board" should be established effective April 26, 2004 since my position at Toledo (Lang Yard) has been abolished effective April 25, 2004.

Thank you in advance for your prompt attention and action. I look forward to your response.

Sincerely,

Timothy W. Black

Cc: Richard A. Johnson, Pres. BRCA — Certified Return Mail 7000 0600 0027 2447 5754
James V. Waller, General Chairman JPB 200 — Certified Return Mail 7000 0600 0027 2447 5785
Paul Warner, CMO GTWRR — Certified Return Mail 7000 0600 0027 2447 5778
Ms. Brown, USDOT OIG Investigator — Certified Return Mail 7000 0600 0027 2447 5761

(26)

Labor Relations

17641 South Ashland Avenue
Homewood, Illinois 60430

CN

www.cn.ca

VIA CERTIFIED MAIL: #7003 2260 0001 8439 2335

April 28, 2004

Mr. Timothy W. Black
2055 Middleton Pike
Luckey, OH 43443

Dear Mr. Black:

This is in reference to your letter of April 21, 2004, in which you request that an extra board at Lang Yard be established following the abolishment of your position, effective April 25, 2004. The Company's position remains unchanged from my correspondence dated April 23, 2004.

Again, on the date you were notified that your position was abolished, you were advised that you could do one of four things: 1) Exercise your seniority to displace a T carman at Flat Rock, 2) Take a separation to be computed in accordance with the Washington Job Protection Agreement, 3) Accept a position at Flint, or 4) Take furlough without protection.

It is the Company's understanding that you have elected option number 4, furlough without protection. I reiterate that carman positions are available at Flint, Michigan. Should you desire to accept one of those positions, you must do so on or prior to July 24, 2004. In the interim, you will continue to be furloughed without protection.

Yours truly,

J. S. Gibbins
Director, Labor Relations

cc: Paul Werner, Superintendent - Mechanical
Cathy Cortez, Manager – Labor Relations
Marilyn Kovacs, Manager – Labor Relations
J. V. Waller, General Chairman – BRC Div. TCU

Labor Relations

17641 South Ashland Avenue
Homewood, Illinois 60430

www.cn.ca

VIA CERTIFIED MAIL: #7003 2260 0001 8439 2304

April 23, 2004

Mr. Timothy W. Black
2055 Middleton Pike
Luckey, OH 43443

Dear Mr. Black:

This is in reference to your letter of April 16, 2004, in which you indicate that you are allegedly accepting a position on an extra board at Lang Yard following the abolishment of your position, effective April 25, 2004.

On the date you were notified that your position was abolished, you were advised that you could do one of four things: 1) Exercise your seniority to displace a T carman at Flat Rock, 2) Take a separation to be computed in accordance with the Washington Job Protection Agreement, 3) Accept a position at Flint, or 4) Take furlough without protection.

According to your letter, you have elected option number 4, furlough without protection. This is to advise that carman positions are available at Flint, Michigan. Should you desire to accept one of those positions, you must do so on or prior to July 24, 2004. In the interim, you will continue to be furloughed without protection.

Yours truly,

J. S. Gibbins
Director, Labor Relations

cc: Paul Werner, Superintendent - Mechanical
Cathy Cortez, Manager – Labor Relations
Marilyn Kovacs, Manager – Labor Relations
J. V. Waller, General Chairman – BRC Div. TCU

James V. Waller
General Chairman JPB 200
127 Baron Circle
Corryton, TN 37721

Certified Return Receipt 7000 0600 0027 2447 5679

Re: GTW-DTSL Carmen, Lang Yard, Toledo, OH

Dear Mr. Waller:

Please be advised that this letter is in response to the following letters:
4/22/04 letter (fax) from Gerrow to Waller
4/24/04 letter (fax) from Waller to Gerrow

We have enormous concerns that we, the Carmen from Lang Yard, Toledo, OH are being illegally denied the protective rights under the mandate of Finance Docket 28250 and the ICC 360 Report. We understand that Mr. Richard Gerrow may not fully understand all of the agreements involved beginning with the Collective Bargaining Agreements dating back to 1949, the protective conditions mandated by Congress, the ICC, and the STB in Finance Docket 28250 and 33556. In addition, the protective conditions mandated by Congress in 5(2)(F) of the Interstate Commerce Act (The I.C. Act), as amended by the Section 402(A) of the Railroad Revitalization and Regulatory Reform Act of 1976 (The 4R Act), recodified as 49 U.S.C. 11347; the 1933 "The Emergency Railroad Transportation Act" enacted by Congress; the Washington Job Protection Agreement of 1936 (WJPA) generally conceded to be the blueprint for all subsequent job protection agreements. In 1940, due to *United States vs. Lowden*, 308 U.S. 225 (1939), (The Supreme Court upheld the imposition of these labor protective conditions), Congress through the Transportation Act of 1940 enacted various amendments to the I.C. Act including the original Labor Protective Provisions contained in Section 5(2)(F), 49 U.S.C. (United States Congress). In 1944, *Oklahoma Ry, Trustees – Abandonment of Operations* resulted in 257 I.C.C. 177 (1944) "Oklahoma Conditions". Ten years later came the "New Orleans Conditions". By 1970, Congress enacted the Rail Passenger Service Act of 1970 (The Amtrak Act). In 1971, Secretary of Labor Hodgson certified a Labor Protective Arrangement that because known as "Appendix C-1". In 1976, Congress substantially revised Part I of the I.C. Act when it adopted the 4R Act (Section 402(A)). Finally, comes the "New York Dock Railway – Control – Brooklyn Eastern District Terminal, Finance Docket No. 28250 (May 13, 1977).

We are extremely concerned, Mr. Waller, that your letter (fax) dated 4/24/04 misrepresents the trust of the afforded and mandated protection rights of the former DTSL employees *Michael Watkins, Timothy Black, and Thomas Sorge* in Finance Dockets 28250, 28676, 33556 and the September 23, 1979 Agreement as ordered by the ICC in the ICC 360 Report, the Implementing Agreement dated September 23, 1981, Section V-2, and the 1983 Extra Board Agreement. In our opinion, you personally, as well as the GTW, are refusing to acknowledge the Labor Protective Agreements and Conditions set forth in the aforementioned 43 years of Labor Protection.

As sighted in the United States Court of Appeals, Second Circuit No. 61, September Term 1979, Docket No. 79-4086, New York Dock Railway and Brooklyn Eastern District Terminal, *Petitioners vs. United States of America and the Interstate Commerce Commission*, Respondents, before Waterman, Feinberg and Timbers, Circuit Judges, the employee has the right to "**cherry pick**" his or her labor protection if they have more than one to choose from. The employee can choose between a Collective Bargaining Agreement, a Labor Protective Agreement, or Conditions as long as he or she does not do **duplication or pyramiding** of benefits (Weston Award) as rephrased by the ICC in the Finance Docket 28250 which is the aforementioned Court of Appeals Case Docket 79-4086.

In your 4/24/04 letter, you specifically state as follows: "Section 7, DTSL employees who are receiving dismissal allowances shall be obligated to accept a reasonably comparable position with the GTW or the DT&I which **does not require a change in residence** in order to maintain their protection hereunder."

James V. Waller
General Chairman JPB 200
127 Baron Circle
Corryton, TN 37721

Certified Return Receipt 7000 0600 0027 2447 5679

You go on to say "This Section applies specifically to DTSL employees who were receiving a dismissal allowance at the time the Agreement was effective. You did not state that the affected employees were former DTSL employees, so I must assume they were not." Mr. Waller, YOUR ASSUMPTION IS INCORRECT! We, Michael Watkins, Timothy Black and Thomas Sorge were DTSL employees prior to the merger. None of us have ever signed anything that severed our ties with the DTSL.

Enclosed you will find copies of two (2) bulletins dated in 1983. This was the first time the employees at the DTSL, Lang Yard, needed to use the aforementioned Protective Conditions due to abolishment of their positions, as set forth by the ICC and the September 23, 1981 Agreement and the 1983 "Extra Board Agreement". In 1979, the ICC reopened the record to receive the Labor Protective Agreement between the GTW and the RLEA. Please note, this was before the merger consummation of June 6, 1980. You will also notice the statement at the middle of the bulletin "The above employees will exercise their seniority where possible. Any protected employee who is unable to hold a position due to seniority will be placed on the extra board". This bulletin was sent from the Battle Creek facility and signed by then Chief Mechanical Officer, R.G. Lipmyer.

It is clear, Mr. Waller, that the 1979 Agreement provides "Attrition type protection for all employees who have an employment relationship with the carrier on the date of the merger. However, employees who may be in furloughed status will not pickup any protection until they are recalled to service." (According to Merriam-Webster, attrition means "*a reduction (as in personnel) as a result of resignation, retirement, or death".)* Make no mistake, the attrition referred to means "life-time protection". A letter from the RLEA (Rail Labor Executive Association) dated October 19, 1979, also states "Grand Trunk Western Railroad and Detroit, Toledo & Ironton Railroad Protective Agreement". Please also note the enclosed DT&I System Federation System No. 16, James A. Klimtzak (General Chairman JPB 350-BRCA).

We strongly suggest that you, Mr. Waller, begin to support us, the Lang Yard, Toledo, OH Carmen. We are very aware of the protection provided to us under the New York Dock Finance Docket 28250. This is not a grievance covered under the Railway Labor Act. This issue is covered under the minimum protection of the New York Dock as prescribed by 49 USC 11347. We encourage you to read Appendix III, 1, 1B, 1C, 1D, 2, 3, 4, 4(1,2,3,4B), 5, 5B, 5C, 6, 6B, 6C, 6D, 7, 8, 9, 10, 11 – Arbitration of Disputes, 11B, 11C, 11D, 11E, 12, 12i, 12ii, 12iii, 12B, 12C, 12D, Article II, Article III, Article IV and Article V. In addition, you should read the 1979 Agreement in its entirety along with the 1981 Agreement, especially V.2 (also stated in New York Dock Appendix III-No. 3), and the 1983 Extra Board Agreement. As we have stated in our previous letters, we choose the "Extra Board". This is our choice of protective agreements that are all implemented by the New York Dock as mandated by Finance Docket 28250.

We, the DTSL protected "CERTIFIED ADVERSELY AFFECTED" employees expect you to IMMEDIATELY demand the GTW establish an "Extra Board" effective April 26, 2004.

Anything less will enact a dispute with the Carrier and Legal Judicature for misrepresentation by the Local Lodge 6327 and JPB #200 & the BRC-TCU.

James V. Waller
General Chairman JPB 200
127 Baron Circle
Corryton, TN 37721

Certified Return Receipt 7000 0600 0027 2447 5679

We await your prompt reply.

Michael Watkins

Timothy Black

Thomas Sorge

GTW-DTSL Carmen
Lang Yard, Toledo, OH

Enclosures:
(2) 1983 Bulletins
October 19, 1979 Letter GTW, Lang, RLEA
December 7, 1979 Letter from Law Offices of Highsaw, Mahoney & Friedman

Cc: Richard A. Johnson, Pres. BRCA — Certified Return Receipt 7000 0600 0027 2447 5662
Richard Gerrow, Local Chairman Lodge 6327 — Certified Return Receipt 7000 0600 0027 2447 5686
Ms. Brown, USDOT OIG Investigator — Certified Return Receipt 7000 0600 0027 2447 5693

Marilyn J. Kovacs, Manager Labor Relations
CN - Grand Trunk District)
2800 Livernois, Suite 300, PO Box 5025
Troy, Michigan 48007-5025
Phone: (248) 740-6211 Fax: (248) 740-6269

December 15, 2003
Our File: 8405-BRC-1188

Copies to:
C Rowley
J Miller
D Dolas

Mr. J. V. Waller, General Chairman
Brotherhood of Railway Carmen – Division
Transportation Communications Union
127 Baron Circle
Carryton, TN 37721

Dear Sir:

Reference is made to your letter dated September 23, 2003 submitting a grievance/time claim in behalf of thirty-six (36) employees seeking compensation for work opportunities and compensation that they may have lost as a result of not being placed on an extra board or being returned to full employment with the company when they were furloughed from the PDS Rail Car Services Company on March 7, 2001. The Organization agreed to extend the time limit for the Carrier's response to this claim until December 19, 2003.

Review of the issue indicates that the grievance/time claim is without basis.

(1) The claim is untimely and barred under Rule 29-Grievances account you did not submit it to the carrier until September 25, 2003 which was not within sixty (60) days of March 7, 2001 the date of the occurrence upon which this claim is based.

2001 DISTRUCTION

(2) This claim is based on an occurrence of March 7, 2001 and has been withdrawn. In this regard your attention is directed to Side Letter No. 1 to our agreement of April 9, 2001 which stipulates that, **all time claims have been withdrawn,** if they are based on an occurrence prior to June 3, 2001 which is the effective date of the agreement (sixty (60) days after April 4, 2001 which was the date when the Carrier received written advice of ratification of the agreement).

(3) The claim is improper because it is a duplicate of the June 12, 2001 claim submitted by the organization in behalf of the same claimants based on the same alleged position and contentions. That claim was identified as Carrier File: 8405-BRC-1135; the claim was declined by the Carrier and the Organization accepted the Carrier's declination.

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ATTACHMENT # 14

(4) The claim is also procedurally in error because many of the individuals listed and identified as claimants in this case are improper. Some claimants were not Option "D" employees, some did not qualify for any of the options, some were re-hired by the company and others have applied for or been awarded RRB retirement/disability annuities.

(5) Notwithstanding these improprieties in procedure, there are no merits to this claim for the reasons set forth in the Carrier's correspondence to your Organization in the cases in Carrier File Nos. 8405-BRC-1135 and 8405-BRC-1174. All correspondence is made a part of this case by reference thereto. Additionally, all carmen employees who were on the Port Huron protected guaranteed extra board who elected to forego their 1979 and 1981 merger protection and elect one of the 1996 options severed seniority and employment rights with the company. In that regard your attention is directed to the Port Huron Carmen's Seniority Roster for the years from 1997 through 2003.

All protective agreements and arrangements require that employees must be available to perform service for the Carrier in order to maintain eligibility for any job protection benefits. The GTW merger protected Carmen forfeit eligibility for extra board/protection pay if they do not continue to be available to protect GTW/BRC work.

Your appeal is declined. However, if desired, the case may be discussed at the next scheduled claims conference.

Yours very truly,

M. J. Kovacs
Manager, Labor Relations

L Thornton
Note:
These employees were available Mar 7, 2001 according to CBA 1996 Letter #2

brc1188.doc

CN

www.cn.ca

United States Region

Karen A. McCarthy
Human Resources Manager

17641 S. Ashland Avenue
Homewood, Illinois 60430-1345
708-332-3569 (Telephone number)
708-332-6737 (Facsimile number)

Copies To: Crawl
Hicks

February 16, 2005

Mr. J. V. Waller
General Chairman – Carmen
Joint Protective Board No. 200
BRC Division TCU
127 Baron Circle
Corryton, Tennessee 37721

Re: Claimants: Carmen R. L. Hoag, et al.
Location: Battle Creek, MI
File No: GTW 126-104-29

Dear Mr. Waller:

This will confirm our conference of February 11, 2005, in which you appealed the claim on behalf of Carmen R. L. Hoag, R. E. Parson, E.R. Bell, R. A. Pupel, D. A. Hicks, A. J. Worm, R. L. Burk, C. E. Linsley, F. H. Falk, T.J. Manchester, D. C. Matthews, L. G. Foster and H. C. Mellen (Claimants). Organization alleges that Carrier violated the provisions of Agreement "F" dated September 23, 1981, and the Agreement effective February 28, 1983, dated March 18, 1983 that amends and defines Agreement "F" when an Extra Board was not created when Claimants' positions were abolished at Battle Creek.

Article IV, subparagraph (a) of the Agreement signed April 9, 2001 with the GTW Carmen provided that all employees in active service as of April 9, 2001 would be retained in service as Carmen unless or until retired, discharged for cause, or otherwise removed by natural attrition. Under Subparagraph (b), employees required to relocate anywhere on the GTW or IC to retain the benefits of subparagraph (a) would be entitled to the relocation benefits contained in the September 25, 1964 National Agreement. Carrier was not obligated to create an Extra Board as the employees were notified when their positions were abolished that they had one of four options:

1. Exercise seniority to displace a T-carman;
2. Take a separation to be computed in accordance with the Washington Job Protection Agreement
3. Accept an open position at another location; or
4. Take furlough without protection.

As protected employees, these Claimants either exercised seniority to other full-time positions or elected to take a lump sum separation payment. Therefore, even if the creation of an extra board was required, which it is not, there aren't any available employees to call. For the record, our declination is reaffirmed.

Very truly yours,

Karen A. McCarthy

Karen A. McCarthy
Human Resources Manager

ATTACHMENT # 5

cc: Mr. Paul R. Werner – via email

Ms. Linda Morgan, Chairperson
United States Transportation Board
Washington, D.C. 20243-0001

May 17, 2001

Dear Ms. Morgan:

I again am compelled , rightfully so , to inform you as best as I can concerning the BRCA - GTWRR apparent con operation by presenting to your and your STB, a implementing agreement , or give the appearance of an implementing agreement in the transaction , 33556 , CN -GTW- IC Merger.

Richard A. Johnson , President of BRCA had to have agreed with GTWRR in that supposed agreement that provided New York Dock provisions for "ALL" carmen affected in the merger. If you will read the letter # 2 I faxed to you yesterday, you will see where any carman who had "seniority" on or before January 10, 1996 , would be covered under F.D. 28676 , the 1979 Merger agreement GTWRR& DT&I , and subsequently the DTSL. That letter #2 also states the 1981 implementing agreement , which included the 1983 "extra board" agreement , in which the options , (a) (b) and (d) in the January 10, 1996 contract and letter of understanding (option (b) were included .

Option (d) consists of 21 carmen , dues paying at the former GTWRR carshops , where they went to work January 1, 1997. Those carmen are laid off because of a "BANK" foreclosure against PDS Railcar. PDS had leased the Port Huron GTWRR Carshops. These members must be covered by the 1979 agreements since they continue to have GTWRR seniority under the option (d) which is in addition to option (a) and (b). These carmen tried to go back to work before the "CONTRACT" Johnson and Waller signed with GTWRR in March 2001. Johnson and Waller signed away the work that these carmen claimed , and those carmen did not "VOTE" on the contract as should be the case. The GTWRR is dragging it's feet and the BRCA did also. Both signed an agreement in an attempt to abrogate these dues paying carmens rights. They still collect their 40% pay each work from GTWRR and pay their $48.00 dues.

They had a right to vote on that contract but was denied. The contract has affected them directly , adversely. Now Johnson has order Waller to handle their problem and agreed with the local chairman Miller, that they do have seniority and should come back to the GTWRR under the 1979 Merger agreement. (BUT the VOTE is over!) Johnson negotiated the September 25, 1964 provisions despite the letter #2. The Carrier GTWRR did to. So who is on first?

Not only option (d) carmen were affected adversely , but those on option (a) and (b) . They fall under letter # 2. I negotiated in good faith with GTWRR and they did likewise in 1996. That is not the case with the BRCA and GTWRR in 2001. I believe the "ONLY" solution is to place all GTWRR carmen under the provisions already negotiated and in place before the present contract and that is the 1979 agreement as amended in 1981 and 1983. The options were just for the affected carmen in Port Huron who lost their point seniority but "NOT" their GTWRR seniority. They all receive Railroad retirement credits each month. They all pay union dues to TCIU.

The STB should bring charges against the blatant outright trickery by the GTWRR and BRCA against the STB and the membership. This directly affects COMMERCE , in that GTWRR is trying , with the help of Johnson to get rid of FRA qualified inspectors (carman inspectors) , qualified car repairers and contract out that work so as not to have to transfer the work to other GTWRR or ICRR locations. That would leave the immediate area completely at the mercy of CN, who is required in Canada to hold only 80% braking power , but 100% in the USA. This is where the STB and FRA should communicate.

Ms. Morgan , none of this would have occurred , had I been allowed to represent my people as I was elected to do. Johnson, Scardelletti and TCIU and GTWRR have had it pretty easy and their way now that I was wrongfully removed from office . I believe Attorney General Ashcroft will straighten that out.

Johnson and GTWRR interfered with the Commerce Act, when they lead you all to believe they would negotiate in good faith. They did this to assure CNR more profits, and less responsibility to the workers who built the railroads. Johnson and GTWRR 2001 contract article 4 is a document of criminality and deception!

These GTWRR carmen were never supplied a "COPY" of the 1979, 1981 or 1983 agreements as ordered by the ICC in F.D. 28676 . The DT&IRR Carmen each and every one received a copy before we were transferred to Michigan and our shops closed in Jackson, Ohio. I made sure they got theirs and they knew what they had!!! Johnson took advantage of these GTWRR carmen in Michigan and Toledo. If the carmen did not know what they had, how could anyone vote correctly? Johnson made them think he really did something for them , when he actual;ly did something for M.J. Kovacs and she knew better also! That is criminal!

Sincerely

Larry Thornton

Larry Thornton (1-810-364-6522)

CERTIFICATE OF SERVICE

This to certify that . I Larry G. Thornton did send by overnight Express Mail a copy of the "appeal" to the STB , to each of the following stated parties in the T.W. Black v GTWRR-CN dispute on April 28, 2005 .

Tracking No. ED 571327720 US
Ms. C.K. Cortez
CN-GTWRR Labor Relations
Homewood, Illinois 60430-1339

4-28,2005

Tracking No. ED 781980565
Mr. Thomas N. Ronald , Arbitrator
POBox 1334
Willamsville, N.Y. 14231 1334

4-28-2005

This in compliance with the STB rules of appeal.

Larry G. Thornton

Larry G. Thornton
3156 Nokomis trl.
Clyde, Mi. 48049

810-984-8644